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Title 3—

The President

Proclamation 7990 of March 23, 2006

Small Business Week, 2006

By the President of the United States of America

A Proclamation

The entrepreneurial spirit of America is robust and strong, and small businesses are thriving throughout our great Nation. The opportunity to own a business is an important part of the American dream. During Small Business Week, we celebrate small business owners and employees who are willing to take risks and work hard in pursuit of a better life for themselves and their families.

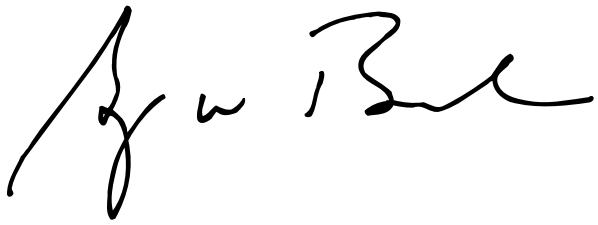
Our economy has created almost 5 million jobs since August 2003. Small businesses create most new jobs in our country, and small businesses have been a driving force behind America's tremendous economic growth and job creation. By adopting sound economic policies that help small businesses continue to grow and expand, we will keep our economy moving forward and create more jobs for American workers.

My Administration remains committed to fostering an environment where innovation succeeds and small businesses can flourish. We are working with the Congress to make the tax relief permanent and to pass Association Health Plans to allow small businesses to join together and buy insurance at the same discounts big businesses receive. We are encouraging small business owners and employees to consider health savings accounts, which help small businesses provide health insurance for their workers and give consumers greater flexibility in how they spend their dollars. We also are continuing to work to open new markets for American products and services abroad. Putting a stop to the frivolous lawsuits that drive up the cost of doing business will further help small businesses enhance the quality of life for their employees and their communities.

During Small Business Week, and throughout the year, we applaud the men and women who own and operate small businesses and spur economic growth. Through their entrepreneurial spirit and commitment to excellence, they help ensure that America remains a place where dreams are realized.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9 through April 15, 2006, as Small Business Week. I call upon the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and their employees and encourage the development of new small businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third 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.



[FR Doc. 06–3044
Filed 3–27–06; 8:45 am]
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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24252; Directorate Identifier 2006–NM–062–AD; Amendment 39–14528; AD 2006–05–11 R1]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the maintenance requirements manual (MRM) by incorporating procedures for repetitive functional tests of the pilot input lever of the pitch feel simulator (PFS) units. That AD also requires new repetitive functional tests of the pilot input lever of the PFS unit, and corrective actions if necessary; and after initiating the new tests, requires removal of the existing procedures for the repetitive functional tests from the MRM. This AD retains the requirements of the existing AD and further clarifies the requirements of the AD. This AD results from a report that the shear pin located in the input lever of two PFS units failed due to fatigue. We are issuing this AD to prevent undetected failure of the shear pin of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

DATES: The effective date of this AD is March 27, 2006.

On March 27, 2006 (71 FR 12277, March 10, 2006), the Director of the Federal Register approved the incorporation by reference of a certain publication.

On February 13, 2004 (69 FR 4234, January 29, 2004), the Director of the Federal Register approved the incorporation by reference of Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.''

We must receive any comments on this AD by May 30, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On February 28, 2006, we issued AD 2006–05–11, amendment 39–14508 (71 FR 12277, March 10, 2006). That AD applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness of the maintenance requirements manual (MRM) by incorporating procedures for repetitive functional tests of the pilot input lever of the pitch feel simulator (PFS) units. That AD also requires new repetitive functional tests of the pilot input lever of the PFS unit, and corrective actions if necessary; and after initiating the new tests, requires removal of the existing procedures for the repetitive functional tests from the MRM. That AD resulted from a report that the shear pin located in the input lever of two PFS units failed due to fatigue. The actions specified in that AD are intended to prevent undetected failure of the shear pin of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

Actions Since AD Was Issued

Since we issued that AD, we received telephone calls from three airplane operators. Two operators stated that the requirement to remove the functional check specified in paragraph (f) of the AD from the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual was confusing and will cause an undue burden of possibly grounding airplanes. The third commenter stated that the reference to ''aircraft maintenance manual'' in paragraph (f) of the AD should be changed to ''aircraft maintenance requirements manual'' for clarification purposes. That operator stated that it has both types of manuals and was not sure which manual needed to be revised.

We agree with the operators that clarification is necessary. It was our intent that paragraph (f) of that AD refer to the ''maintenance requirements manual''; we have revised paragraph (f) of this AD accordingly. It was our intent that after accomplishing the initial functional test required by paragraph (g) of that AD, operators could stop performing the requirements of paragraph (f) of that AD and the repetitive functional checks of the pilot input lever of the PFS units, Task R27–31–A024–01, specified in the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness. Therefore, we have revised paragraph (g) of this AD to clarify this point.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Therefore, we are issuing this AD to revise AD 2006–05–11. This new AD retains the requirements of the existing AD and further clarifies the requirements of the AD.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the failures of the shear pins of the PFS units, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24252; Directorate Identifier 2006–NM–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Dockets

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–14508 (71 FR 12277, March 10, 2006) and adding the following new airworthiness directive (AD):

2006–05–11 R1 Bombardier, Inc. (Formerly Canadair): Amendment 39–14528. Docket No. FAA–2006–24252; Directorate Identifier 2006–NM–062–AD.

Effective Date

(a) The effective date of this AD is March 27, 2006.

Affected ADs

(b) This AD revises AD 2006–05–11.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7999 inclusive, and 8000 and subsequent, certificated in any category.

Unsafe Condition

(d) This AD results from a report that the shear pin located in the input lever of two pitch feel simulator (PFS) units failed due to fatigue. We are issuing this AD to prevent undetected failure of the shear pin of both PFS units simultaneously, which could result in loss of pitch feel forces and consequent reduced control of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2004–02–07

Revise Airworthiness Limitations (AWL) Section of Maintenance Requirements Manual

(f) For airplanes having serial numbers 7003 through 7999 inclusive: Within 14 days after February 13, 2004 (the effective date of

AD 2004–02–07), revise the AWL section of the Instructions for Continued Airworthiness of the maintenance requirements manual by incorporating the functional check of the PFS pilot input lever, Task R27–31-A024–01, as specified in Bombardier Temporary Revision (TR) 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' into the AWL section.

New Requirements

New Repetitive Functional Tests and Corrective Actions

(g) Before the accumulation of 4,000 total flight hours, or within 100 flight hours after the effective date of this AD, whichever occurs later: Do a functional test of the pilot input lever of the PFS units to determine if the lever is disconnected, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005. Repeat the test at intervals not to exceed 100 flight hours. Accomplishing the initial functional test terminates the requirements of paragraph (f) of this AD and the repetitive functional checks of the PFS pilot input lever, Task R27–31–A024–01, as specified in the AWL section of the Instructions for Continued Airworthiness of CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual.

(h) If any lever is found to be disconnected during any functional test required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005.

(1) Before further flight, replace the defective PFS with a serviceable PFS in accordance with the Accomplishment Instructions of the alert service bulletin; and

(2) Within 30 days after removing the defective PFS, submit a test report to the manufacturer in accordance with the Accomplishment Instructions of the alert service bulletin. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Previously Accomplished Actions

(i) Actions done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–144, including Appendix A, dated September 15, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Canadian airworthiness directive CF–2005–41, dated December 22, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005; and Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations;'' as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On March 27, 2006 (71 FR 12277, March 10, 2006), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–27–144, Revision A, dated February 14, 2006, including Appendix A, dated September 15, 2005.

(2) On February 13, 2004 (69 FR 4234, January 29, 2004), the Director of the Federal Register approved the incorporation by reference of Bombardier Temporary Revision 2B–1784, dated October 24, 2003, to the CL–600–2B19 Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.''

(3) Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 21, 2006.

Kyle L. Olsen,

Acting Manager , Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2981 Filed 3–23–06; 3:18 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 375

[Docket No. OST–2003–15511]

RIN 2105–AD39

Certain Business Aviation Activities Using U.S.-Registered Foreign Civil Aircraft

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

ACTION: Final Rule.

SUMMARY: In response to a petition by the National Business Aircraft Association (NBAA), this final rule amends the requirements governing the licensing and operation in the United States of ''foreign civil aircraft'' which are not engaged in common carriage. The rule provides that certain types of operations by business aircraft operators using U.S.-registered foreign civil aircraft (such as carriage of a company's own officials and guests, or aircraft time-sharing, interchange or joint ownership arrangements between companies) do not constitute operations ''for remuneration or hire'' and, therefore, do not require a DOT permit. This document also dismisses, without prejudice, the request of NBAA that the regulation be amended so that reimbursement by political candidates carried on foreign civil aircraft is not considered ''remuneration or hire'' under the rule.

DATES: This final rule becomes effective April 27, 2006

FOR FURTHER INFORMATION CONTACT: David Modesitt, Chief, Europe Division, Office of International Aviation (X–40), U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–2384.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

On February 7, 2005, OST published a notice of proposed rulemaking (NPRM) (70 FR 6382) that proposed to amend Part 375 to further delineate whether, and under what circumstances, companies operating U.S.-registered foreign civil aircraft are engaged in commercial air operations for remuneration or hire to, from, and within the United States and need specific authorization for each flight. Part 375 currently defines ''foreign civil aircraft'' as ''(a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-

registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States.'' Section 49 U.S.C. 40102(a)(15) of Title 49 of the U.S. Code defines ''citizen of the United States'' as, among other things, ''a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.''

''Commercial air operations'' are defined in Part 375 as operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations **for remuneration or hire to, from or within the United States** [emphasis added] including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under 49 U.S.C. 41301, exemptions, and all other operations in air transportation.

Thus, if a company that does not meet the definition of a citizen of the United States (for example, if its president is not a U.S. citizen) owns, directly or through a parent or subsidiary, a U.S.-registered corporate aircraft, that aircraft is considered to be a ''foreign civil aircraft'' under Part 375. In addition, if any funds are transferred to the company operating the foreign civil aircraft to cover the costs of the operation even by another company within the same corporate family as the operator, that transfer of funds, as ''remuneration'' under Part 375, would require a specific authorization for each such flight.

As explained in the NPRM, the Department addressed this issue in limited past situations, specifically as it pertains to demonstration flights performed on a chargeback basis related to the sale of aircraft or flight training indoctrination (see 14 CFR 375.31 and 375.34), and chargeback operations conducted by a parent for its wholly-owned subsidiary under circumstances where the management and/or board of directors and management of the corporation were not entirely composed of U.S. citizens (see Letter dated March 20, 2003, from then Assistant Secretary for Aviation and International Affairs Read Van de Water to Pete West, Senior Vice President, NBAA, in Docket OST–2003–15511). In these instances the Department indicated that such operations involving the transfer of funds, within the confines of the facts of those circumstances, did not constitute operations for remuneration or hire, and, therefore, a foreign aircraft permit would not be required under Part 375 of the Department's regulations.

In the NPRM, it was our tentative view that NBAA had made a persuasive case for the changes to Part 375 that it seeks, and we proposed to amend our regulations to effect those changes.

Under Part 375, U.S.-registered foreign civil aircraft may not perform these types of operations without prior Department approval for each individual flight. The kinds of intra-corporate, interchange, joint ownership, and time-sharing operations involving transfer of funds to reimburse costs that are the subject of this proceeding have become a more and more necessary part of global commerce involving U.S. business. The limitation on cost reimbursement for these operations, requiring individual permits, are problematic for companies operating U.S.-registered foreign civil aircraft, since these flights are often time-sensitive and involve a now common practice of cost reimbursement within a corporate organization. When there is a well-defined class of operations with a clear purpose in cost-only transfer of funds, there is not a significant potential for those operations to be considered common carriage operations for hire in the United States. It is in the public interest to accept cost reimbursement in these circumstances, without prejudice to any other interpretation of ''remuneration or hire,'' as has been done for demonstration flights and flight indoctrination, as not being within the purview of Part 375 as ''for remuneration or hire.''

As the U.S. economy has become increasingly global and businesses more multinational in character and structure, more and more companies operating U.S. registered business aircraft do not meet the statutory requirements of ''citizen of the United States'' for commercial air operations. These companies, because of their corporate structures, are thus hindered in conducting the range of business aviation activities that they otherwise could provide if their operations were not considered ''commercial air operations'' under Part 375. This situation, in our view, unnecessarily hampers the companies' flexibility in structuring their corporate organizations and relationships and limits global business operations to the detriment of U.S. interests. A company that might own a U.S.-registered business aircraft should be able to operate that corporate aircraft in the United States for certain business purposes and be reimbursed for costs by a subsidiary without specific flight approval by the Office of Secretary under Part 375.

We previously explained in the NPRM our belief, in the context of the limited business-related activities presented by NBAA, that public interest considerations warrant treating all companies operating U.S. registered aircraft the same way. Specifically, we believe that where a company operating a U.S.-registered foreign civil aircraft engages in the kinds of business air service transactions as defined below, reimbursement for certain expenses should not be considered remuneration or hire within the context of Part 375. The cost reimbursement under these conditions does not present a situation of operating an aircraft ''for hire,'' thereby allowing the potential for common carrier operations. The operations would now no longer require prior approval in the form of a foreign aircraft permit under Part 375. In this instance our decision to so amend our rule treats U.S.-registered foreign civil aircraft consistently throughout Department regulations.[1]

The NPRM proposed to implement these changes by adding a new section to Subpart D of Part 375. The new section, ''Certain business aviation activities using U.S.-registered foreign civil aircraft,'' would authorize those types of operations that NBAA requested be covered. We also proposed a minor technical amendment to the existing language in the statutory authority citation in § 375.1 to reflect the recodification of Title 49 of the U.S. Code, changing the current reference of ''section 402 of the Federal Aviation Act of 1958, as amended'' to ''49 U.S.C. 41301.''

[1] We note that the FAA in 14 CFR Part 91 authorizes similar reimbursements as non-commercial. We wish to make clear, however, as we did in the NPRM, that nothing in our proposed change to Part 375 would in any way serve to alter any orders, regulations, or requirements, or interpretations thereof, of the Federal Aviation Administration.

Discussion of Comments

On April 8, 2005, Carnival Corporation (Carnival Cruise Lines) submitted comments in response to the NPRM. Carnival indicated its support for the contemplated rule change, and proposed four technical changes to the proposed rule change to create greater clarity and meet the intent of the proposed rule change. First, Carnival proposes that the first sentence of proposed section 375.37, under the definition of ''company'' should be changed to also include a definition of ''person'' to read: * * * (''person'') is defined as an individual, firm, partnership, corporation, company, association, joint-stock association, or government entity.'' Second, Carnival proposes that the second sentence of proposed section 375.37 should be revised to read ''* * * when the carriage is, **in the case of intracorporate operations**, within the scope of, and, *in all cases*, incidental to the business of the company * * *'' [Carnival proposed change in bold]. Third, Carnival proposes that, in subsection (a) of proposed section 375.37, the word ''company'' should be deleted immediately preceding the semicolon at the end of the sentence; and that in subsection (d) of proposed section 375.37 the words ''another company'' should be deleted immediately preceding the semicolon and replace them with the words ''a person to the extent such time-sharing is authorized under 14 CFR 91.501 or any successor regulation.''

NBAA filed comments in response to the NPRM as well on April 8, 2005. NBAA supports the NPRM and proposed three technical changes to the proposed rule change to create greater clarity and meet the intent of the proposed rule change. In section 375.37(a), NBAA proposed replacing the words ''Intracorporate operations'' with ''Intracompany operations,'' adding the words ''or a subsidiary of its parent'' after the first use of the word ''parent,'' deleting the word ''corporate'' from the subsection, and changing the end of that subsection to read as follows ''* * * provided that the operator of the U.S.-registered foreign civil aircraft must hold majority ownership in, or have a common parent with, the company for which it provides operations.'' In section 375.37(b), it proposed replacing the word ''company'' with the word ''person'' in the two places where the word ''company'' appears; and, in section 375.37(d), replacing the word ''company'' with the word ''person'' in the first clause.

NBAA filed an additional comment on the text of the proposed rule change, suggesting an amendment of the NPRM to include newly proposed language to grant to foreign operators of business aircraft, under 14 CFR Part 375, the privileges given to U.S. operators under FAA FAR Part 91.321 relating to the carriage of elected officials. NBAA notes that this issue may not be properly within the scope of the instant rulemaking, and that it might be better for the Department to consider the request as an independent rulemaking, particularly if it would delay a final decision in this case.

A comment was filed by B. Sachau, expressing concern over the security implications of foreign aircraft being operated within the United States, stating that all foreign aircraft should be required to obtain permits to conduct such operations, and stating that management in companies operating aircraft in the United States should be U.S. citizens.

Discussion of Final Rule

This final rule adopts the amendments proposed in the NPRM with certain changes to reflect the suggestions proposed by interested parties in this proceeding, where those suggestions add to the clarity of the revised rule.

We are accepting NBAA's proposed changes in section 375.37(a) for clarity, as there is no change in the substance or intent of subsection (a). For clarity, we have amended the opening sentence in section 375.37 to define ''company'' as a ''person,'' which is defined in the statute, thereby eliminating the need for NBAA's changes in sections 375.37(b) and (d).

With respect to NBAA's request that we either amend this rulemaking proceeding, or consider another rulemaking to include as in 14 CFR Part 91 new provisions concerning business aircraft travel by political campaign travelers, we have decided that the issue of political campaign travel is too far removed from the issue being addressed here and that, in any event, consideration of campaign travel would unduly delay a final rule in this proceeding. We will therefore dismiss, without prejudice, this request by NBAA. Should NBAA wish to pursue this matter, it is free to file its request in a new and separate docket for our consideration.

Further, we do not believe that the changes proposed by Carnival add to the clarity of the rule or are otherwise warranted. Carnival seeks to expand the reach of the final rule in ways that go beyond business-aviation activities and would allow, in some cases, non-business-aviation entities to benefit from the revised rule's provisions. We are not persuaded that such changes are justified. The intent of NBAA's request, and of this proceeding, is to facilitate certain business aviation activities conducted with foreign civil aircraft, and we do not believe that the final rule should encompass operations or activities that are not clearly business-related. To consider such a change to scope of NBAA's request, and our NPRM, would, as with the political campaign travel issue discussed above, unnecessarily delay the issuance of this amended rule. To the extent that some past ad hoc Department grants of authority have, in Carnival's view, been more expansive, we remain prepared to look at these kinds of situations in the future on a case-by-case basis, under the existing prior approval provisions of Part 375.

With respect to the comment from B. Sachau, the authority of foreign civil aircraft to operate in the United States for certain purposes is authorized by statute, as is the authority of U.S.-registered aircraft to be owned by non-U.S. citizens (see 49 U.S.C. 41703 and 44102). These foreign civil aircraft are subject to regulation by the Federal Aviation Administration and by the Transportation Security Administration, Department of Homeland Security. Part 375 requires that commercial air operations by these aircraft be subject to the grant of economic authority in the form of a permit. The rule adopted in this rulemaking does not in any way affect FAA or TSA authority or regulation.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that correspond to these amendments.

Executive Order 12866 and DOT Regulatory Policies and Provisions

This rule is not a significant regulation under Executive Order 12866 or DOT Regulatory Policies and Provisions, and was not reviewed by the Office of Management and Budget.

The economic impact of the implementation of the rule will be minimal. The rule will save certain companies the legal expenses and data-preparation expenses of submitting and

processing requests for DOT authority to conduct specified types of intracorporate flight operations. In turn, the Department will save expense by not having to process additional foreign air carrier permit applications. The rule will eliminate an unnecessary and burdensome requirement to obtain approval of the covered operations.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)) of 1996, requires an agency to review regulations to assess their impact on small businesses. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule would almost exclusively affect only large corporations. In addition, we anticipate the rule would have little, if any, economic impact.

Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The Department has assessed the potential effect of this rulemaking and had determined that, as a result of reduced potential paperwork for certain companies, it will have only a positive effect on trade-sensitive activity.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Part 375 contains information collection requirements. However, information collected under Part 375 will not be affected by this change to the rule.

OST Form 4509 is a required Application for Foreign Aircraft Permit or Special Authorization under Part 375 filed with the Department prior to entities conducting certain operations in the United States with foreign civil aircraft. The Department grants or denies the authorization to the entity on a case-by-case basis. Entities file this form as often as necessary whenever they wish to conduct operations for which prior Department approval is required under the Part. This two page form does not require a significant amount of time to complete (the Department estimates one-half hour per application), and is not burdensome to complete. Other than general aviation knowledge and experience inherent with each applicant, no specialized training or education is required to complete the form. For calendar years 2005 and 2004, the Department received an average of 23 requests using the form.

As required by the Paperwork Reduction Act, the Department will submit this previously approved collection requirement to the Office of Information and Regulatory Affairs of the OMB for review, and reinstatement, without change.

OMB Control Number: 2106–0002.

Title: 14 CFR Part 375—Navigation of Foreign Civil Aircraft Within the United States.

Burden hours: 13 hours annually. (Average of 26 collections per year in recent years, and an estimated .5 hours to complete each Form 4509.)

Affected public: Operators of foreign civil aircraft within the United States.

Cost: There are no costs to the respondents as a result of this collection.

Description of Paperwork: OST Form 4509 ensures that the Department has sufficient information to judge the merits of applications for authority to operate foreign civil aircraft within the United States under Part 375. This form standardizes information requests, to the benefit of both the Department and applicants.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate for the purposes of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The Department has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and we have determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The Department anticipates that any action taken will not preempt a State law or State regulation or affect the States' ability to discharge traditional State government functions.

List of Subjects in 14 CFR Part 375

Administrative practice and procedure, Aircraft, Foreign relations, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 375 as follows:

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

■ 1.The authority citation for 14 CFR part 375 is revised to read as follows:

Authority: 49 U.S.C. 40102, 40103, and 41703.

■ 2. In §375.1, the definition of ''Commercial air operations'' is revised to read as follows:

§ 375.1 Definitions.

* * * * *

Commercial air operations shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under 49 U.S.C. 41301, exemptions, and all other operations in air transportation.

* * * * *

■ 3. A new § 375.37 is added to read as follows:

§ 375.37 Certain business aviation activities using U.S.-registered foreign civil aircraft.

For purposes of this section, ''company'' is defined as a person that operates civil aircraft in furtherance of a business other than air transportation. U.S.-registered foreign civil aircraft that are not otherwise engaged in commercial air operations, or foreign air transportation, and which are operated by a company in the furtherance of a business other than transportation by air, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air), may be operated to, from, and within the United States as follows:

(a) *Intra-company operations.* A company operating a U.S.-registered foreign civil aircraft may conduct operations for a subsidiary or parent or

a subsidiary of its parent on a fully-allocated cost reimbursable basis; provided, that the operator of the U.S.-registered foreign civil aircraft must hold majority ownership in, be majority owned by, or have a common parent with, the company for which it provides operations;

(b) *Interchange operations.* A company may lease a U.S.-registered foreign civil aircraft to another company in exchange for equal time when needed on the other company's U.S. registered aircraft, where no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two aircraft;

(c) *Joint ownership operations.* A company that jointly owns a U.S.-registered foreign civil aircraft and furnishes the flight crew for that aircraft may collect from the other joint owners of that aircraft a share of the actual costs involved in the operation of the aircraft; and

(d) *Time-sharing operations.* A company may lease a U.S.-registered foreign civil aircraft, with crew, to another company; provided, that the operator may collect no charge for the operation of the aircraft except reimbursement for:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hanger and tie-down costs away from the aircraft's base of operations.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses for fuel, oil, lubricants, and other additives.

Issued under authority delegated in 49 CFR 1.56a in Washington, DC, on this 21st day of March, 2006.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 06–2930 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM05–22–000]

Five-Year Review of Oil Pipeline Pricing Index

Issued March 21, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order establishing index for oil price change ceiling levels.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final order concluding its second five-year review of the oil pricing index, established in Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993). After consideration of all the initial, reply and supplemental comments, the Commission has concluded that the PPI+1.3 index should be established for the five-year period commencing July 1, 2006. At the end of this period, in July 2011, the Commission will once again review the index to determine whether it continues to measure adequately the cost changes in the oil pipeline industry.

DATES: March 28, 2006.

ADDRESSES: Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Harris S. Wood (Legal Information), Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8224.

Robert W. Fulton (Technical Information), Office of Energy Markets and Reliability, 888 First Street, NE., Washington, DC 20426, (202) 502–8003.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. On July 6, 2005, the Commission issued a Notice of Inquiry (NOI),[1] in which it proposed to continue using the Producer Price Index for Finished Goods (PPI or PPI–FG) for the next five-year period beginning July 1, 2006, to track oil pipeline industry cost changes. The Commission applies the index to oil pipeline transportation tariffs to establish rate ceiling levels for pipeline rate changes. The NOI invited interested persons to submit comments on the continued use of PPI and to propose, justify, and fully support, as an alternative, adjustments to PPI. Comments and reply comments were due September 13 and October 13, 2005, respectively.

2. Based on our review of the comments and reply comments received, and for the reasons discussed below, the Commission determines that the PPI plus one point three percent (PPI+1.3) should be established for the five-year period commencing July 1, 2006, and concludes that this index satisfies the mandates of the Energy Policy Act of 1992 (Energy Policy Act).[2]

Background

3. Congress, in the Energy Policy Act, required the Commission to establish a ''simplified and generally applicable'' ratemaking methodology for oil pipelines, consistent with the just and reasonable standard of the Interstate Commerce Act (ICA).[3] On October 22, 1993, the Commission issued Order No. 561,[4] promulgating regulations pertaining to the Commission's jurisdiction over oil pipelines under the ICA, and to fulfill the requirements of the Energy Policy Act. In so doing, the Commission found that using an indexing methodology to regulate oil pipeline rate changes, accompanied with certain alternative rate-changing methodologies where either the pipeline or the shipper could justify departure from the indexing methodology, would satisfy both the mandate of Congress and comply with the requirements of the ICA. The Commission found that the indexing methodology adopted in the final rule would simplify, and thereby expedite, the process of changing rates by allowing, as a general rule, such changes to be made in accordance with a generally applicable index, and that it would ensure compliance with the just and reasonable standard of the ICA by subjecting the chosen index to periodic monitoring and, if necessary,

[1] Five-Year Review of Oil Pipeline Pricing Index, IV FERC Stats. & Regs. [Notices] ¶ 35,552 (2005)

[2] 42 U.S.C.A. 7172 note (West Supp. 1993). The Energy Policy Act's mandate of establishing a simplified and generally applicable method of regulating oil transportation rates specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into it.

[3] 49 U.S.C. app. 1 (1988).

[4] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, FERC Stats. & Regs. [Regs. Preambles, 1991–1996] ¶ 30,985 (1993), 58 FR 58753 (Nov. 4, 1993); *order on reh'g*, Order No. 561–A, FERC Stats. & Regs. [Regs Preambles, 1991–1996] ¶ 31,000 (1994), 59 FR 40243 (Aug. 8, 1994), *aff'd., Association of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

adjustment. In determining which index to use, the Commission obtained the views of interested parties, including industry participants, shippers and others on its proposal to change its ratemaking methodology for oil pipelines. Dr. Alfred E. Kahn (Dr. Kahn) supported the establishment of an index of PPI–1 on behalf of a group of shippers, as the index that best tracked pipeline cost changes over a period of time. After extensive analysis of various suggested indices, the Commission adopted the PPI–1 index for the purpose of allowing oil pipelines to change rates without making cost-of-service filings. This index was chosen over others because it came the closest to tracking the historical changes in actual costs as reported in FERC Form No. 6 and was to be in effect for the five-year period July 1996 through June 2001. The Commission also committed to review every five years the continued effectiveness of its index.

4. In the course of establishing the appropriate index for the first review period 2001–2006, the Commission initially deviated from the methodology it had used in establishing the index as PPI–1 percent, concluding that the index should be retained as PPI–1, based upon a revision to the methodology established in Order No. 561. The Commission's order was reviewed by the U.S. Court of Appeals and remanded because the Commission departed from the Order No. 561 methodology. Specifically, the U.S. Court of Appeals found that the Commission neither adequately addressed parties' concerns over using a new methodology, nor in the alternative articulated reasons for changing its averaging methodology applied in Order No. 561. Further, the U.S. Court of Appeals found that the Commission failed to justify its methodological shifts from Order No. 561 regarding outliers and the use of net plant. Upon remand, the Commission concluded that the most appropriate way to measure pipeline costs and rate ceilings, and to assure that the nexus drawn between them continued, was to apply the same methodology as it initially applied in Order No. 561. The Commission thus returned to the method adopted in Order No. 561 in its further analysis on remand. Utilizing the Kahn methodology which resulted in an index of an unadjusted PPI, the Commission adopted PPI as the appropriate index for the five-year period beginning July 2001. This order on remand was upheld by the U.S. Court of Appeals.[5] In the current five-year review, we are applying that same methodology.

Initial Comments and Initial Reply Comments

5. On September 13, 2005, the Association of Oil Pipelines (AOPL) submitted its comments in response to the NOI. AOPL, as supported by a study done by its consultant, Dr. Ramsey Shehadeh (Dr. Shehadeh), contends that an index of PPI+1.3 percent rather than PPI is the appropriate index for the next five years. AOPL avers that application of the Commission's established, U.S. Court of Appeals-approved methodology shows that pipeline costs over the past five years increased at a rate of PPI+1.3 percent. AOPL maintains that the increased pipeline costs result from imposition of new safety and environmental regulatory obligations, voluntary security measures in the wake of 9/11 and increased energy costs. AOPL states that an index of PPI+1.3 percent will ensure that pipeline rates are ''just and reasonable'' while allowing efficient pipeline carriers to recover their increased costs over the next five years. These carriers, AOPL argues, will also be able to expand capacity to eliminate existing capacity constraints, and continue ongoing efforts to improve pipeline safety, efficiency, and security.

6. Lion Oil Company, National Cooperative Refinery Association, Sinclair Oil Corporation and Tesoro Refining and Marketing Company (collectively the Refiners) filed a joint response on October 13, 2005, to AOPL's September 13 initial comments. The Refiners and the Air Transport Association of America (ATA), whose comments are discussed below, are both supported by the same study prepared by their consultant, Peter K. Ashton (Mr. Ashton), who urges the Commission to keep PPI as the index. The Refiners contend that the correct analysis of FERC Form No. 6 data indicates that the Commission should maintain PPI to determine annual rate increases. The Refiners state that PPI was determined appropriately by applying the methodology described by the Commission and the U.S. Court of Appeals for the District of Columbia Circuit over the past 12 years. The Refiners claim that AOPL failed to provide any sound support for its claim that PPI+1.3 percent is the inflationary index that tracked oil pipeline cost increases the best over the past five years. The Refiners contend that Mr. Ashton demonstrated a sound analysis of the data whose results indicate the Commission's initial view in its NOI was correct: The PPI without any adjustment is the index that has best tracked oil pipeline cost increases.

7. On October 13, 2005, the ATA also filed a response to AOPL's comments. ATA contends that today's economic environment requires careful scrutiny of any proposed pipeline rate increases. ATA states the ability of pipelines to recover costs not generally encompassed by indexing through the cost-of-service ''safety valve'' or through the Commission sanctioned ''security surcharge'' ensures that pipelines can recover normal cost changes through indexing without, at the same time, having unjustified across-the-board burdens placed on the airline industry by implementation of an unreasonably high indexing adjustment. As mentioned above, ATA relied upon the same Ashton study as the Refiners. ATA states that its position, and that of its member airlines, is that the Commission should adopt a price index of PPI for the next five-year period.

8. In his Sworn Declaration, Mr. Ashton claims that he employed the same methodology in conducting his analysis of oil pipeline cost increases in the 1999–2004 period as that used and adopted by the Commission in its previous review of the pricing index, as well as by Dr. Kahn. Based on his detailed analysis of historical oil pipeline cost data from 1999–2004, employing this methodology, Mr. Ashton concluded that the PPI, without any adjustment, closely tracked oil pipeline cost increases for that period. He states that taking the midpoint between the two composite averages (middle 50 percent and middle 80 percent of the sample) yields an annual rate of increase that is virtually identical to the increase in the PPI for the relevant time period. Mr. Ashton concludes that there is no basis for modifying the current PPI index since it already appropriately tracks normal industry average costs.

9. In addition to conducting his own analysis, Mr. Ashton reviewed the submission of AOPL and its expert, Dr. Shehadeh. Mr. Ashton concluded that the data and analysis employed by Dr. Shehadeh are deficient, cannot be replicated, and therefore cannot be relied on. Specifically, Mr. Ashton cites the fact that much of the data pertaining to the later years of the study were compiled and supplied by AOPL, instead of Dr. Shehadeh obtaining his sample data from FERC Form No. 6. Mr. Ashton questions the lack of information concerning the source of Dr. Shehadeh's data, and the apparent lack of any attempt to validate or verify the information. Mr. Ashton states that, more significantly, in an attempt to

[5] 102 FERC ¶ 61,195 (2003), *aff'd., Flying J Inc.* v. *FERC*, 363 F.3rd 495 (D.C. Cir. 2004).

increase the sample size, Dr. Shehadeh made numerous additions and adjustments to the Form No. 6 data for ''potential omissions and potential errors,'' much of which was based on information supplied by AOPL. Mr. Ashton claims that Dr. Shehadeh made such adjustments without any clear indication as to exactly what those adjustments were, or how such adjustments affected the results of the study. As a result, Mr. Ashton concludes that any results of Dr. Shehadeh's study are deficient and unreliable.

10. The U.S. Department of Transportation (DOT) also filed comments in response to AOPL on October 13, 2005. DOT expressed no views on the precise index the Commission should choose. DOT submitted its comments to confirm certain points raised by AOPL with respect to oil pipeline regulatory obligations. DOT states that it has adopted safety regulations that impose significant obligations and costs on pipeline operators.[6] DOT states that it is concerned about the capacity of the underlying infrastructure of the nation's transportation networks, including oil pipelines, to meet growing demands placed upon them. DOT urges the Commission to consider seriously the financial commitment necessary for operators to maintain and expand pipeline system capacity.

11. DOT states that in the long run, its rules will prove beneficial to the public and pipelines as well, but in the short run, the ensuing costs will prove considerable, with the additional effect of reducing or deferring operator revenues. DOT estimates that, over the seven year period 2001 through 2007, initial baseline assessments would cost operators more than $120 million; retesting, $14.5 million annually; preparation of integrity plans, almost $18 million; and related implementation costs, almost $10 million the first year and $5 million annually thereafter. DOT states it could not estimate the repair costs incurred as a result of its required testing as it is impossible to predict the number and kind of conditions that would be disclosed, but given the fact that most repairs involve excavating pipeline segments and replacing sections of pipe, along with the requisite pressure reductions required to accommodate repairs, DOT believes such repair costs would be considerable. DOT noted that in 2004 pipeline operators made more than 1,500 repairs posing immediate threats to pipeline integrity, and noted that one operator reported a single repair cost $8 million to make. DOT therefore contends that it is imperative that the Commission factor these costs into its deliberations in choosing the appropriate index for the next five-year period. DOT believes that failure to do so could lead to various outcomes inconsistent with the public interest, such as operators being disinclined to invest in additional capacity, abandoning older or marginally economic pipelines as a cost-cutting measure, or operators being tempted to cut corners on safety as a way of bringing costs more in line with revenues. DOT also cites evidence demonstrating a serious underinvestment in petroleum pipeline infrastructure and underscoring that several pipeline systems of national importance lack redundancy, with consequences including higher prices and less competitive markets for petroleum products in some regions, supply disruptions and price spikes due to relatively minor service interruptions, and diversion of petroleum products to other, less efficient and desirable transportation modes.

12. DOT claims that the extent of capacity restrictions in the nation's pipeline infrastructure is becoming more apparent, as is the realization that the current regulatory mechanisms may not lead to appropriate reinvestment in the industry. DOT suggests that the Commission consider convening a workshop or technical conference to explore regulatory mechanisms that could facilitate critical investment in maintaining and expanding pipeline system capacity.

13. On October 14, 2005, the Pipeline Safety Trust (Trust), an organization that promotes fuel transportation safety through education and advocacy, filed to respond to AOPL's comments. The Trust agrees with AOPL that safety requirements on the industry have significantly increased since the last five-year review, including but not limited to the new integrity management regulations. In addition, the Trust states that it is persuaded by the 1999–2004 data contained in AOPL's draft comments (which were analyzed by AOPL using a U.S. Court of Appeals-approved methodology) that the costs on the industry have increased enough to justify a PPI+1.3 percent as the pricing index for the next five years. However, the Trust requests that prior to approving PPI+1.3 percent, the FERC perform its own technical review of the accuracy and completeness of AOPL's cost data, and the reasonableness and appropriateness of AOPL's analytical methodology.

Exchange of Supporting Data Between Parties and Filed With the Commission

14. To expedite the index review process, AOPL and the ATA and Refiners (hereinafter referred to as Shippers) agreed to exchange source data, spreadsheets, and the detail of the methodology used to support their respective positions of PPI+1.3 percent, and PPI. On November 15, 2005, AOPL and the Shippers filed their supporting workpapers with the Commission.

Subsequent Reply Comments and Responses

15. On January 10, 2006, AOPL filed comments in reply to the study presented by the Shippers, contending that their study contains flawed economic analysis and incomplete and erroneous sampling of pipeline cost data. AOPL claims that, when corrected, the data presented by Shippers support an adjustment of PPI+1.56 percent, which supports AOPL's original position that the Commission should establish the index at least at PPI+1.3 percent.

16. On January 23, 2006, the Shippers filed a joint response to AOPL's January 10 comments. Shippers claim that AOPL's comments distort the position advocated by Shippers and present non-public data upon which AOPL based its incorrect conclusions. Shippers contend that the facts they are presenting for Commission consideration are supported by a study conducted by Dr. Paul J. Smith (Dr. Smith), a prominent mathematician and statistician, as well as by a supplemental study performed by their consultant, Mr. Ashton. Based on new data provided by AOPL, Mr. Ashton added some pipelines to his study, and reconciled much of the data supplied by AOPL with that culled from FERC Form No. 6 data. Mr. Ashton concludes that the Commission should be very cautious about establishing an index higher than the present PPI.

17. Dr. Smith reviewed the dataset consisting of 62 firms that Mr. Ashton originally proposed, as well as the 81firm dataset proposed by Dr. Shehadeh in his January 10 rebuttal declaration on behalf of AOPL. Dr. Smith recommends the use of the median or geometric mean to estimate the five-year cost index, given the Form No. 6 data. In both data sets analyzed, the median and geometric mean are very close together. Dr. Smith argued that the use of the arithmetic mean is clearly not appropriate for either of these data sets. Arithmetic means are not representative of data from skewed distributions.

[6] The DOT integrity management regulations are found at 65 **Federal Register** 75378, December 1, 2000 and 67 **Federal Register** 2136 (January 16, 2002).

18. Shippers conclude that, given the validation of Mr. Ashton's methodology, use of the geometric mean and choice of sample set, the conclusions reached by Dr. Smith, and given the real possibility of substantial errors in the FERC Form No. 6 data, the PPI should be used as the inflationary index for the next five years, or, in the alternative, the Commission should maintain the PPI and institute a rulemaking to establish new criteria and reconsider the methodology currently being used for determining such an index. Shippers contend that the fact that a significant number of large oil pipelines are substantially over-recovering their cost of service lends additional support to this conclusion.

19. On February 9, 2006, AOPL submitted its supplemental reply comments in response to comments made by Shippers on January 23, 2006. AOPL claimed that Shippers, even after admitting to substantial mistakes in their analysis of oil pipeline cost data, resulting in flawed evidence and testimony, nevertheless urged the Commission to adopt a new methodology for setting the price cap index or, alternatively, to retain the PPI index pending a new rulemaking. AOPL argued that the Commission should squarely reject the Shippers' new position because, despite correcting errors in data and sample selection, Shippers' position remains fundamentally flawed. AOPL argued that Shippers' own cost evidence supports a substantial upward adjustment to the current index. AOPL states that, in sum, it is clear that Shippers' real complaint is not with the methodology and cost data used by the Commission to set its price cap index, but rather with the index level the faithful application of such methodology produces. The Commission must, as required by law, apply its established, U.S. Court of Appeals-approved index standard and set PPI+1.3 percent as its new index for the next five years.

20. AOPL argued that, while Shippers purported to apply the Commission-approved methodology for measuring pipeline cost changes, Shippers in fact departed from that standard in several key respects. Even after correcting the data from their original analysis, Shippers' data sample omitted many eligible pipelines, failed to account for mergers, used incorrect data fields and data not reflected on FERC Form No. 6, improperly included cost data from TAPS assets that are not governed by the index and reflect entirely different accounting conventions, and most damaging, performed key calculations in the wrong order, thereby systematically understating cost changes.

21. AOPL's comments addressed as well the report of Dr. Smith, cited by Shippers as a source of validation of its calculations. AOPL claimed that Dr. Smith's analysis is irrelevant to this proceeding, as he does not purport to address Mr. Ashton's analysis and expresses no opinion about the reasonableness of that analysis or its use of composite measures of central tendency. Dr. Smith advocates use of an entirely different standard, the median, does not approve of calculating cost changes in the wrong sequence, and in fact does not even analyze, much less endorse, use of the unweighted geometric mean in combination with the weighted mean and median that Mr. Ashton used. Nor, argues AOPL, did Dr. Smith analyze the middle 50 percent and middle 80 percent data sets. As a result of all this, any reliance Shippers placed on the report of Dr. Smith was misplaced.

22. AOPL addressed Shippers' claims that the Commission must abandon its U.S. Court of Appeals-approved standard because of ''manifest errors'' and because its results are sensitive to ''extreme data points'' by pointing out that the existence and reasonable treatment of outlier data was extensively addressed by the Commission in prior proceedings, and the Commission's methodology was specifically designed to take such an issue into consideration, specifically by employing the middle 50 percent and middle 80 percent samples. As to Shippers' claim that the Commission's methodology is flawed and it should set the index at PPI because a small minority of oil pipelines is over-recovering their cost of service, AOPL replied that the Commission recognized that, in adopting a uniform index for all pipelines, inevitably some pipelines would over-earn while others will under-earn. If Shippers truly believe that individual pipelines are over-earning such that rates cannot satisfy the ''just and reasonable'' requirement, they can file a complaint against those pipelines. AOPL contends that the indexing methodology is not intended to drive rates to cost, but instead to make sure that any rate changes were based on expected cost changes. AOPL further states that the Commission is not subject to a statutory duty to examine whole rates when pipelines propose index rates; rather, its inquiry is limited to a comparison of changes in rates and costs from one year to another.

23. In his Supplemental Rebuttal Declaration on behalf of AOPL, Dr. Shehadeh argues that Mr. Ashton departed from the very methodology he purported to support, failed to implement accurately either the methodology used by Dr. Kahn or by Dr. Smith, has no support in any of the testimonies given in this proceeding for his findings, and for these reasons, such findings are unreliable as a basis for selection of an index for index-based regulation of oil pipeline tariffs. Dr. Shehadeh states that the basis for the differences between his conclusions and those of Mr. Ashton consist principally of errors in Mr. Ashton's data and his flawed order of operations in implementing the methods of Dr. Kahn. Specifically, Dr. Shehadeh cites the fact that Mr. Ashton calculates his cost changes in incorrect order—he applied the geometric mean over time prior to his application of the arithmetic mean across pipelines. Dr. Kahn correctly determined annual average change in costs by employing the geometric mean on the average cumulative changes, as opposed to Mr. Ashton, who in contrast determined the annual average change in costs by employing the average of the geometric means of each pipeline's cumulative changes.

24. Rather than addressing the validity of Dr. Shehadeh's assertion concerning the order of his calculations, Dr. Shehadeh claims that instead, Mr. Ashton introduced an entirely new methodology based on measures of central tendency and composite averages, purportedly based on Dr. Smith's report. Dr. Shehadeh further states that Mr. Ashton's new methodology, especially as it pertains to use of sensitive data, is flawed and therefore unreliable.

25. In conclusion, Dr. Shehadeh continues his support of the use of the methodology the Commission employed in its previous analysis, that Dr. Kahn validated, and that the U.S. Court of Appeals approved. According to Dr. Shehadah, Mr. Ashton's new methodology is completely unsupported by factual evidence, lacks economic foundation, and is unreliable and uninformative. Employing the same methodology used by Dr. Kahn and the Commission and endorsed by the U.S. Court of Appeals demonstrates that actual cost changes experienced by oil pipelines over the last five years almost equaled PPI+1.5 percent, and consequently, the Commission should choose as the index for the next five year period PPI with an adjustment factor no less than 1.3 percent.

26. On February 21, 2006, the American Trucking Association filed letter comments in response to the Commission's NOI. The American

Trucking Association adopted the positions espoused by the Shippers and added no new arguments. On February 28, 2006, the International Air Transport Association filed letter comments, similar to that of the American Trucking Association, in support of the Shippers and again adding no new arguments.

27. On February 24, 2006, Shippers filed additional comments, styled ''supplemental rebuttal,'' and a ''Sworn Rebuttal Declaration'' of Mr. Ashton. The purpose of this filing is to rebut the Supplemental Reply Comments of AOPL, which had been filed on February 9, 2006. Shippers contend that AOPL has made two fundamental and related errors in its Supplemental Reply Comments: AOPL incorrectly states that the Shippers and Mr. Ashton have employed a new methodology; and, even if Shippers have employed a different methodology, the Commission is within its rights to rely on that methodology.

Discussion

Methodology To Calculate the Index Differential

28. Since Order Nos. 561 and 561–A, the Commission has primarily relied upon Dr. Kahn's testimony [7] to develop the methodology to set the index differential [8], which was subsequently approved by the U.S. Court of Appeals.[9] Within the Commission-established method, after each firm's unit cost changes are calculated and weighted, two trimmed data sets are extracted from the master data set. Both parties have constructed the trimmed data sets of the middle 50 percent and middle 80 percent. Trimming is done to remove statistical outliers, or spurious data points that could bias the mean of the sample in either direction. Table 1 provides a description of the statistical values of central tendency used by both parties to develop the index. The industry-wide cost index is calculated by averaging both composites on Line D and then comparing that value to the PPI–FG index data over the same period.

TABLE 1

Line	Middle 80 percent	Middle 50 percent
A	Median	Median.
B	Weighted Mean	Weighted Mean.
C	Un-weighted Mean.	Un-weighted Mean.
D	Composite of 80% = (A+B+C)/3.	Composite of 50% = (A+B+C)/3.

29. Both AOPL and Shippers used the same sample (with the exception of SFPP, L.P.[10]) to describe the central tendency of the data, in which the cost index calculation directly follows. However, the parties have differed in the way in which they calculated the pipelines' cost increases. The result has been that both parties calculate a different pipeline industry cost index; AOPL arriving at an index of PPI+1.49 percent and the Shippers arriving at an index of PPI+0.675 percent.

30. In simple terms, AOPL and the Shippers state that they apply the same methodology but they arrive at different results. Each party calculates total industry costs [11] for each pipeline in the time period between 1999 and 2004, and then estimates the central tendency of the results, sums these amounts, and divides the result by the number of pipelines to arrive at the industry average cumulative change in industry costs (known as the arithmetic mean of the sample). AOPL then derives an annual percent change in industry costs for the 1999 through 2004 period by employing the geometric mean on this industry average cumulative change in costs. AOPL's methodology tracks the methodology previously used by the Commission and approved by the U.S. Court of Appeals. The Shippers, however, depart from the prior approved methodology, in that the Shippers derive the cumulative change in costs (between 1999 and 2004) for each pipeline, by calculating each year's cost change for each pipeline. The year to year cost changes are multiplied together to arrive at the cumulative cost change for that pipeline. The average cost change is determined by taking the geometric mean of that cumulative cost change.

31. We base our analysis of the calculations in this proceeding upon the U.S. Court of Appeals-approved model, and have found that the methodology used by Dr. Shehadeh for AOPL in this proceeding conforms to Dr. Kahn's U.S. Court of Appeals-approved methodology. Our analysis shows that the Shippers' methodology, as represented by Mr. Ashton, is fundamentally flawed.

32. In delineating the index differential, Mr. Ashton, in his first declaration,[12] claims to have accurately applied Dr. Kahn's methodology in calculating average annual cost changes, but our review found that he deviates from Dr. Kahn's methodology in certain respects. In this first attempt, Mr. Ashton determines the average annual change in unit costs for years 1999 through 2004 by calculating the arithmetic average of the geometric mean of each pipeline's cumulative unit cost change, as opposed to Dr. Kahn's method of calculating the geometric mean of the arithmetic average of cumulative unit cost change (Ashton's Decl. at p. 14). On the basis of determining the average cost change of each pipeline, the use of Dr. Kahn's methodology would calculate the cost increase between end years 1999 and 2004 by this formula: (final cost − initial cost)/(initial cost) − 1. Mr. Ashton erred in this step of the calculations by taking the geometric mean of the product of the individual company's yearly cost increase. Furthermore, Dr. Shehadeh has shown that Mr. Ashton's method results in the underestimation of costs.[13]

33. Mr. Ashton responds [14] to Dr. Shehadeh's rebuttal, and claims that the newly added testimony of Dr. Smith supports Mr. Ashton's new methodology.[15] However, in examining Dr. Smith's analysis, it seems that he has followed Dr. Kahn's approach (but not Mr. Ashton's) by calculating percentage cost changes for individual companies, where Dr. Smith states that ''the five-year percent differences in costs as reported'' for individual companies ''were computed as (final

[7] Declaration of Alfred E. Kahn, August 31, 2000, in Review of Pipeline Pricing Index, Docket No. RM00–11–000.

[8] To calculate the index differential, the cost index is compared to the PPI–FG average index for the same time period. The remainder of this calculation [Cost Index–PPI–FG] is the index differential.

[9] *Association of Oil Pipe Lines* v. *FERC,* 83 F.3d at 1437.

[10] SFPP, L.P. was excluded by the Shippers because its cost as reflected in its Form No. 6 were being challenged in a current rate proceeding. The Commission conducted a review of the pipeline samples submitted by both Dr. Shehadeh and Mr. Ashton and determined that, using the Court of Appeals-approved methodology, the exclusion of SFPP, L.P. causes only a 0.02 percent decrease in the average annual cost difference. Thus, the exclusion of SFPP, L.P. still supports the use of PPI+1.3 percent.

[11] Average total cost for an individual pipeline is the average of the change in operating cost (weighted by the operating ration) added to the average of the change in net plant (weighted by the residual, one minus the operating ratio). References to individual pipeline costs beyond this point are assumed to be average total costs.

[12] Sworn Declaration of Peter K. Ashton, October 13, 2005 (p. 3).

[13] Rebuttal Declaration of Ramsey D. Shehadeh, PhD at 10–11, January 10, 2006 by use of a theorem known as Jensen's Inequality.

[14] Supplemental Declaration of Peter K. Ashton, January 23, 2006.

[15] Analysis of Pipeline Index Data, submitted by Paul J. Smith, January 23, 2006.

cost − initial cost)/(initial cost) − 1.'' Therefore, we cannot reconcile Dr. Smith's evidence with Mr. Ashton's statement that ''Prof. Smith clearly points out that given the underlying characteristics of the data and its skewed distribution, the methodology that I employ relying on the geometric mean is the proper methodology for computing the cost increases of individual pipeline companies'' (Supplemental Decl. at p. 2) Dr. Smith's testimony regarding his recommendation of the use of the geometric mean, was to describe with relative accuracy the central tendency of the data, not the calculation of the individual cost increases themselves. Further, Dr. Smith's testimony in regard to this proceeding is incomplete because he only trimmed the cost data by 5 percent, and he never analyzed the ''middle 50 percent'' and ''middle 80 percent'' data sets, which excluded ''outliers,'' adopted by the Commission and approved by the U.S. Court of Appeals. As the Court of Appeals stated, ''[t]he object of excluding outliers is to prevent extreme and spurious data from biasing an analysis, i.e., affecting its result adversely.'' [16]

34. Also, in the same response, Mr. Ashton presents an ''update'' to his methodology, and supports it again with the analysis of Dr. Smith (Supplemental Decl. at p. 7). Originally, Mr. Ashton measured the central tendency of both of the trimmed data sets (80 percent and 50 percent) with the median, the weighted and the un-weighted arithmetic mean (although he still wrongly calculates the cost changes for individual companies by the geometric mean). In the update, Mr. Ashton delineates the weighted and un-weighted means by now taking the geometric mean [17]

$$\overline{X}_g = \exp\left[\frac{1}{n}\sum_{i=1}^{n}\ln X_i\right]$$

of the unit cost change. Mr. Ashton states that this update is justified ''as Dr. Smith points out, in measuring the central tendency it is also appropriate to take the geometric mean and the median—not the arithmetic mean.'' The supporting evidence by Dr. Smith points out that both data sets (untrimmed) are not normally distributed. Dr. Smith states that, ''the data are more accurately described by a skewed lognormal distribution than by a bell-shaped normal distribution, but that neither distribution accurately described the data.'' Dr. Smith then measured the arithmetic average applied to a 5 percent trimmed sample in which he concluded in his analysis that, based on the results, ''the trimmed mean is substantially less than the arithmetic mean, illustrating how a few extremely large indices affect the overall estimate'' (p.5).

35. Shippers, in their Supplemental Rebuttal filing of February 24, 2006, contend that the use of the geometric mean was but a small change and an improvement to the Commission's methodology to better suit the underlying data.[18] The Shippers' underlying belief in this order seems to be that the data in the samples that are used in the Commission's methodology are positively skewed, and therefore, Dr. Smith never had to prove that our samples were skewed. However, Dr. Smith never applied his alternative approach to our samples to determine, based on his analysis, what the best measure of central tendency would be. He contended that he proved that the geometric mean approach would be more accurate on his 5 percent trimmed sample because his result more closely matched the median, and therefore was ''more robust.'' Dr. Smith, though, never proved that the geometric mean was ''more robust'' on the 50 and 80 percent samples.

36. Based on the calculations presented by the Shippers through Mr. Ashton's declarations, it is clear that the methodology the Shippers use departs from the methodology presented by Dr. Kahn. Shippers have not proven that their methodology is superior to that of Dr. Kahn.

Reconciling the Dataset of AOPL and Mr. Ashton

37. In Shippers' January 23, 2006 joint response to comments made on January 10, 2006 by AOPL, Mr. Ashton added some pipelines to his study, and reconciled much of the data supplied by AOPL and culled from FERC Form No. 6 data. Aside from a few remaining pipelines in which discrepancies appear between the data that Mr. Ashton used and the data that Dr. Shehadeh used, Mr. Ashton is prepared to accept the reconciliation and changes offered by Dr. Shehadeh in his Rebuttal Declaration. Mr. Ashton's database is comprised of 79 pipelines that account for 92 percent of all barrel-miles transported in 1999.

38. To investigate the data discrepancies, the Commission has examined the hard copy FERC Form No. 6 data filed by individual pipelines to determine whether complete data for these pipelines are available and whether they match the data used by Mr. Ashton or Dr. Shehadeh. We have compared, on a pipeline-by-pipeline basis, every relevant data value in Mr. Ashton's sample with the corresponding values in FERC Form No. 6. We then have applied to the reconciled data, which account for the only remaining discrepancies identified by Mr. Ashton, the methodology described by Dr. Kahn, adopted by the Commission and approved by the U.S. Court of Appeals. We now discuss those pipeline-by-pipeline comparisons.

39. *Navajo Pipeline Co. L.P.—Holly Energy Partners—Operating L.P.*—Dr. Shehadeh correctly points out in Exhibit A15 of his original declaration and Exhibit 16 of his rebuttal declaration that Navajo Pipeline Co. L.P. (Navajo) was renamed Holly Energy Partners—Operating L.P. (Holly) in 2004. As a result, both companies filed a FERC Form No. 6 in 2004. Mr. Ashton is correct in noting that the 2004 data reported by Dr. Shehadeh comes from only one company, Navajo, and is only partial year data. The Commission agrees that the 2004 data for Navajo and Holly can be aggregated to provide data for the complete year. However, the Commission takes issue with the values Mr. Ashton reports for carrier property and total barrel-miles. A review of Navajo's 2004 FERC Form No. 6 reveals carrier property totaling $10,186,371 and barrel-miles totaling 4,095,048,097. Holly's 2004 FERC Form No. 6 reports carrier property totaling $22,788,803 and total barrel-miles of 3,330,670,969. Thus, the Commission will use $32,975,174 for carrier property and 7,425,719,066 for total barrel-miles.

40. *Olympic Pipe Line Company* —On March 31, 2003, Olympic Pipe Line Company (Olympic) resubmitted its 2001 FERC Form No. 6 to report changes to carrier property, accrued depreciation, and operating revenue. Mr. Ashton is correct to use the data contained in the resubmitted FERC Form No. 6. However, Mr. Ashton fails to reflect the operating expenses provided in the updated FERC Form No. 6 and continues to use the figure reported in Olympic's original 2001 FERC Form No. 6. Thus, the Commission will use the updated $59,520,702 for Olympic's 2001 operating expenses.

[16] *Association of Oil Pipe Lines* v. *FERC,* 281 F.3d 239, 246 (D.C. Cir. 2002).

[17] This geometric mean is a statistical treatment to the data to find central tendency, as opposed to the geometric mean used previously to calculate the index of costs over time. In this application, the general formula (see formula above) was used, where denotes the cost index of firm i.

[18] Supplemental Rebuttal Comments at 2; Ashton Supplemental Rebuttal Decl. at 3.

41. *Premcor Port Arthur Pipeline Company*—Mr. Ashton states that he did not include Premcor Port Arthur Pipeline Company (Premcor) in the dataset he used to calculate oil pipeline costs changes because Premcor lacked complete FERC Form No. 6 data. Dr. Shehadeh agrees with Mr. Ashton on this point. No data is reported for accrued depreciation for the years 2001–2004 even though Premcor did report accrued depreciation in 1999–2000. Without complete data for all six years, a company cannot be included in the dataset. Therefore, the Commission agrees with Mr. Ashton's recommendation that Premcor be excluded from the analysis.

42. *Cypress Pipe Line Company, LLC*—Mr. Ashton criticizes Dr. Shehadeh's use of barrel-mile data for Cypress Pipe Line Company, LLC (Cypress) in 1999 from page 700 of the FERC Form No. 6, rather than data reported on page 600. Mr. Ashton states that the agreed-upon source for barrel-mile data is page 600 of the FERC Form No. 6. Despite this criticism, Mr. Ashton himself elects to use data from page 700, not data from page 600 as he describes. Cypress, however, errs by reporting the number of barrels received into the system, rather than total barrel-miles. This is evident from comparing line 32 of page 600, grand total of barrels received into system, with page 600 line 33a; the numbers are identical. By contrast, line 4 of page 700 reports total throughput in barrel-miles as 78,558,341.83. Thus, the Commission will use 78,558,342 for Cypress's 1999 throughput in barrel-miles.

43. Mr. Ashton raises another substantive issue with respect to the reconciled dataset contained in Dr. Shehadeh's rebuttal declaration. Mr. Ashton notes that there are differences between the operating revenues for five pipelines reported on the FERC Form No. 6, page 114, and FERC Form No. 6, page 301. Specifically, these discrepancies occur with respect to Mobil Pipe Line Company, Mustang Pipe Line Partners, Osage Pipe Line Company, LLC, San Pedro Bay Pipeline Company, and SouthTex 66 Pipeline Company, Ltd.

44. In order to rectify these differences, the Commission adjusted its cost calculation to use the figures endorsed by Mr. Ashton. However, the use of Mr. Ashton's figures proved immaterial as the result still supports the use of PPI+1.3 percent as the new oil index. When the Commission adopted the page 301 data for those pipelines for which Mr. Ashton noted discrepancies, and applied the U.S. Court of Appeals-approved methodology, the results changed by less than 0.01 percent.

Indexing Methodology

45. In the January 23, 2006, response of Shippers to AOPL's January 10 comments, Shippers assert for the first time that, as an alternative to using the current methodology for determining adjustments to PPI after conducting a five-year review, the Commission should continue to use the current unadjusted PPI for the time being and institute a rulemaking to establish a new methodology for determining what the oil pipeline rate change index should be over the next five years. Shippers contend this is appropriate because there are serious defects in the Commission's current index review methodology. AOPL responded to this assertion on February 9, 2006.

46. Notwithstanding Shippers' assertions to the contrary contained in their Supplemental Rebuttal Comments of February 24, 2006, Shippers' suggestion that the Commission should embark upon a new rulemaking proceeding to establish a new method for calculating pipeline cost changes to compare to changes in PPI is beyond the scope of our five-year review as set forth in the NOI that instituted this proceeding. In the NOI, the Commission asked for comments on whether and to what extent the PPI should be adjusted to better reflect those cost changes, not whether the method for determining pipeline costs should be changed. The NOI specifically stated:

> The Commission proposes to continue to utilize PPI for the next five-year period as the index to track changes to the costs of the oil pipeline industry and to apply to rate ceiling levels for oil pipeline rate changes. The Commission invites interested persons to submit comments on the continued use of PPI and to propose, justify, and fully support, as an alternative, adjustments to PPI. (NOI, ¶ 4)

The parties have filed numerous comments reflecting their positions on what adjustments should or should not be made to the PPI upon review, and only as a last-minute item has anyone suggested that the Commission embark on a course of discarding the Commission's current five-year review methodology of determining pipeline cost changes to compare to changes in the PPI–FG over the five-year review period. The information provided by Shippers is insufficient to persuade us that our method should be discarded. Beyond these issues, no one has suggested that the Commission look to change to an index other than PPI–FG as representative of oil pipeline industry-wide costs.

47. Shippers first contend the use of FERC Form No. 6 data make application of the cost standard inaccurate. They claim that the data contained in the FERC Form No. 6 is sporadic, incomplete, and contain substantial errors. Shippers point out that out of 186 FERC regulated pipelines, only 79 pipelines have provided sufficient Form No. 6 data to warrant being included in the database for analysis. They believe the 42 percent sample is too small to justify the continued use of Form No. 6 data.

48. The FERC Form No. 6 data is the only systematic source of information regarding the past costs and revenues of oil pipelines. As previously mentioned, Mr. Ashton concedes his sample contains 79 pipelines that account for over 92 percent of the 1999 total barrel-miles. In defending Order No. 561–A on appeal to the D.C. Circuit on this very issue, the Commission stated that ''[t]here is * * * no reason to believe that samples representing between 10% and 33% of the industry, taken from the median range of the industry cost data, were too small to produce reliable results.'' [19] In addition, the Shippers argued before the U.S. Court of Appeals that the, ''[d]ata submitted to FERC have become increasingly accurate, thus eliminating the need for a proxy.'' [20] Further, the U.S. Court of Appeals agreed that it is evidently uncontested that the reported data have become more accurate.

49. Second, Shippers express concern that a significant number of oil pipelines are not complying with FERC Form No. 6 filing requirements. Specifically, Shippers were concerned that the Commission has not consistently enforced these filing requirements nor has it examined the Form No. 6 data and required corrections of the errors noted by Mr. Ashton in his supplemental declaration.

50. The Commission disagrees with the Shippers' assertion that the Commission has not consistently enforced the accurate and timely filing of FERC Form No. 6 data. In 1994, the Commission addressed additional revisions to the Form No. 6 in Order Nos. 571 and 571–A,[21] including adding

[19] *See*, Brief for Respondent Federal Energy Regulatory Commission, *Association of Oil Pipelines* v. *Federal Energy Regulatory Commission,* No. 94–1538, at 36 (July 24, 1995).

[20] *See, Flying J Inc.* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004).

[21] Order No. 260, 47 FR 42327 (Sept. 27 1982); FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 31,006 (Oct. 28 1994). Order No. 571–A, 60 FR 356 (Jan. 4, 1995); FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 31,012 (Dec. 28, 1994).

a new page 700. The information included in the Form No. 6 was determined at the time to be the minimum necessary for Shippers to assess filed rate changes under Order No. 561.

51. Prior to 2000, FERC Form No. 6 required that a pipeline include its annual cost of service, operating revenues, throughput in barrels, and throughput in barrel-miles. The Commission found that the Form No. 6 data was inadequate to monitor the reasonableness of a pipeline's filed rates. Thus, the Commission proposed the addition of the following reporting requirements: operating and maintenance expenses, depreciation expense, AFUDC depreciation, amortization of deferred earnings, rate base, rate of return, return on rate base, and income tax allowance. Since the Form No. 6 is intended to be both a financial and ratemaking document,[22] these additional requirements ensured that the Commission had the financial, operational, and ratemaking information needed to carry out its regulatory responsibilities to monitor the oil pipeline industry in a dynamically changing environment.

52. In Order No. 620, the Commission required pipelines to maintain workpapers that fully support the data reported on page 700 including but not limited to the total cost-of-service calculations and all of its associated components.[23] In addition, Order No. 620 provides that the Commission or its staff may request that a pipeline make its work papers available for review.[24]

53. Finally, Shippers submit that the U.S. Court of Appeals-approved methodology is no longer reliable because the results are sensitive to small changes in the sample size. Mr. Ashton argued in his Supplemental Declaration that the results achieved by using the Commission's methodology accords undue weight to extreme data points at the high and low end of the spectrum, with high cost oil pipelines exerting a disproportionately strong impact. Using Dr. Smith's ''trimmed percent sample,'' Mr. Ashton notes that by simply removing the four highest and lowest pipelines from the data set, the cost index fell from a range of PPI+0.66 percent and PPI+0.69 percent to PPI+0.58 percent and PPI+0.68 percent (middle 80 percent and 50 percent respectively).[25]

54. The sensitivity analysis Mr. Ashton includes in his Supplemental Declaration does not provide a reasoned basis for the Commission to abandon its current methodology because the existence and proper treatment of ''outlier'' data were extensively addressed in prior Commission proceedings, and the current U.S. Court of Appeals-approved methodology was specifically designed to take this matter into account. To minimize the risk that extreme and/or erroneous observations bias the result, the Commission uses only the middle 50 percent and 80 percent of the relevant cost data, thus ensuring that the index is not driven by statistical outliers.

Possible Over-Recovery of Costs-of-Service by Large Pipelines

55. Shippers point to the fact that a significant number of large oil pipelines are substantially over-recovering their cost-of-service as further support for maintaining the PPI without adjustment as the appropriate index for the subsequent five-year period. Shippers maintain that the index methodology was designed to enable pipelines to recover costs by permitting them to increase rates at the same pace as they are predicted to experience cost increases. Shippers contend that the role of the index is to accommodate normal cost changes, not to guarantee recovery of all costs at any time and in full. Shippers state that a concern of the Commission was that under an indexing system, rates would diverge from actual costs and the resulting rates would fail the just and reasonable test. According to Shippers, this concern has proven to be well founded, as evidenced by data reported on FERC Form No. 6 which indicate that a number of interstate pipelines have been charging indexed rates that permit them to substantially over-recover their cost-of-service of fourteen pipelines during the 2002–2004 period that were subject to indexing regulation, the total interstate operating revenues of these pipelines, and the amount by which each of these pipelines have been over-recovering its self-reported cost-of-service. Shippers conclude that clearly an increase in the current index will further increase the amount of over-recoveries by these pipelines.

56. AOPL responds that this argument is flawed as a matter of regulatory policy and lacks any basis in evidence. The PPI index reflects the year-to-year changes in industry costs in general and, as such, reflects changes in the ''average'' oil pipeline's cost of service. Under the indexing system, existing rates remain subject to the Commission's complaint process. If Shippers believe that individual pipelines are over-earning such that their rates cannot satisfy the just and reasonable requirement for oil pipeline rates, their remedy would be to file complaints against those pipelines. AOPL further argues that another reason why over-earning pipelines do not represent a flaw in the Commission's index methodology is that the index governs rate changes based on ''grandfathered'' rates. AOPL claims that the rates of most oil pipelines are deemed to be just and reasonable, thereby establishing a ''baseline'' for future rates. Therefore, to the extent a carrier was over-earning in 1992, the indexing methodology was not intended to drive those rates to cost, but instead to make sure that any rate changes were based on expected cost changes. As to Shippers' comparison of the cost of service to revenues for their small sample of pipelines, AOPL points out that five of those fourteen pipelines have, in whole or in part, ''market-based'' rates and as such are not fully subject to the index. In addition, AOPL claims that another of the pipelines on their list has rates based on a rate negotiated with Shippers in 2002. For all the above reasons, AOPL disputes the position taken by Shippers.

57. The Commission is not subject to a statutory duty to examine the whole rate when an oil pipeline proposes an indexed rate change. Rather, our inquiry is limited to a comparison of the changes in the rates and costs from year to year. We recognized in adopting a uniform index for all pipelines that inevitably some pipelines would over-earn while others will under-earn. It is a fact simply inherent in an industry-wide pipeline index. Shippers' use of a sample of fourteen pipelines culled from the entire data set of pipelines being analyzed only serves to emphasize this point. Further, Shippers' own calculations show that many of these pipelines actually experienced a decrease in their over-recoveries over the short time period being considered. In addition, even though Shippers' calculations may accurately measure over-recovery for a few pipelines, AOPL shows that, based on Page 700 information for 2003 and 2004, pipeline

[22] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats. & Regs. [Regulations Preambles 1991–1996] ¶ 31,006 at 31,169 and FERC Form No. 6, p.i, I.

[23] FERC Stats. & Regs. [Regs. Preambles] ¶ 31,115 (Dec. 13, 2000); 65 FR 81335 (Dec. 26, 2000).

[24] Staff examined each pipeline's compliance with the requirements for reporting additional information on page 700 of the FERC Form No. 6. After substantial follow-up contacts by staff, with the 183 jurisdictional oil pipelines, only 12 pipelines were not in compliance and expressed the need for additional accounting help in executing a complete Form No. 6. Staff referred the pipelines to either the Association of Oil Pipelines personnel or staff resources for advice.

[25] Supplemental Declaration of Peter K. Ashton at 22–24.

revenues were 20 percent below booked costs of service. For the above reasons, the Commission finds that the existence of such over-recoveries does not mean that PPI is the most appropriate index.

Structural Changes in the Oil Industry

58. Shippers claim that structural changes in the oil industry ensure that adequate capital will be available to pipelines if they charge rates determined by the PPI index level. They point to the emergence of publicly-traded partnerships such as master limited partnerships (MLPs) and limited liability companies that have elected to be taxed as partnerships. According to Shippers, MLPs have resulted in increased concentration in the pipeline industry, and are the forms through which many pipelines subject to indexing are owned. To evaluate the impact of indexing, Shippers state that the environment of MLPs must be reviewed as well. According to Shippers, MLPs continue to enjoy good access to capital markets, and the number, size and total amount of capital raised by MLPs continues to grow. Shippers argue that MLP's success at capital raising is being accompanied by an active acquisitions market as well as by partnerships' continued investment in energy infrastructure (organized growth) projects, thus proving that raising capital is not a problem for the oil industry. Shippers also argue that another important consideration is the use of funds generated from pipeline operations. Shippers state that MLPs generally distribute all available cash flow to unit-holders in the form of quarterly distributions (similar to dividends). Thus, Shippers contend, one cannot assume that increases in rates resulting from an increase in the Commission's index will be used to offset any increased costs for safety, efficiency and security, or to fund capital expansion. Shippers conclude that no basis exists for the proposition that extraordinary rate increases must be approved across-the-board in order to provide sufficient capital for oil pipelines to expand and operate their systems in a safe and secure environment. On the contrary, Shippers contend, the available evidence suggests that more than sufficient capital is presently available at rates determined by the PPI to achieve these objectives.

59. AOPL responds that the Shippers are attributing what is occurring for only a small sample of the entire pipeline industry (approximately 38 energy-related MLPs exist as of August 2005) to the entire industry. AOPL states that what happens with MLPs means absolutely nothing for the majority of oil pipelines that are not owned and operated by MLPs. According to AOPL, the very purpose of the five-year review of the cost index is to ensure that pipeline rates keep pace with cost changes in the industry so that past levels of capital investment can be maintained. AOPL argues that, to preserve adequate capital investment, the Commission must adopt a price index consistent with its cost standard of at least PPI+1.3 percent.

60. The fact that oil pipelines have been able to attract capital in the past does not establish that they would be able to do so in the future if the Commission fails to set an index that is adequate. We believe the continuation of the methodology used in Order No. 561 to arrive at the new index accurately captures costs in the interstate oil pipeline transportation sector, and will produce an index sufficient for pipelines to maintain their capital investment. We find adherence to the Order No. 561 methodology supports an oil index of PPI+1.3 for the next five years. Finally, we find that no party has made a convincing showing that the Order No. 561 methodology is no longer adequate for computing the oil index.

Continuation of the Current PPI and Impairment of Pipeline Expansion

61. Shippers claim that, contrary to the brief filed by DOT, the current PPI index will not impair the ability of pipelines to expand their systems or invest sufficient capital in environmental, safety and security measures, and dispute AOPL's contention that failure to increase the PPI by 1.3 percent would deter such investment. Shippers restate their contention that the current index has in no way slowed pipeline expansion. They argue that the rate of increase in trunk revenues at a level greater than the increase in pipeline costs and the PPI indicates a widening of pipeline profit margins during the 1999–2004 period. Shippers point out as well that the Commission has anticipated that certain costs, such as those related to environmental, safety and security measures, might not be covered by an index and have provided pipelines with the ability to address such issues. Specifically, a pipeline can upon demonstration that it is affected by uncontrollable circumstances that preclude it from recovering all of its prudently-incurred costs under the indexing system, depart from indexing and make a cost-of-service showing to justify a rate greater than the index ceiling rate.

62. The Commission disagrees with Shippers on two levels. First, the brief filed by DOT specifically stated that DOT expresses no views as to the precise index the Commission should choose. DOT's submittal simply was a confirmation of certain points raised by AOPL with respect to regulatory obligations. DOT stated that it has adopted safety regulations that have imposed significant obligations and considerable costs on pipelines as they moved to compliance with such regulations. Based on concerns about the capacity of the underlying infrastructure of the nation's transportation network, including oil pipelines, to meet the growing demands placed upon it, DOT urged the Commission to consider the financial commitment necessary for pipelines to maintain and expand their system capacity in light of these new regulations.

63. Second, we disagree with Shippers that the pipelines can expand their systems and handle environmental, safety and security measures based on the present PPI index, without any need to increase that index. The ability of pipelines to accomplish what Shippers claim they have in terms of system expansion and environmental, safety and security measures is due in no small part to the appropriateness of the current index level. There is no guarantee that in the future pipelines will retain that ability unless the Commission once again adopts an index that allows the pipelines to recover their expected cost increases.

64. DOT has suggested that the FERC consider convening a workshop or technical conference to explore regulatory mechanisms that could facilitate critical investment in maintaining and expanding pipeline system capacity. The Commission acknowledges the potential need for increased capacity of the nation's oil transportation system, and appreciates the concerns expressed by DOT in this matter. The current proceeding is limited to consideration of the appropriate index for oil pipeline ratemaking. We will continue to monitor oil pipeline performance, and if appropriate, at some future date, may convene such a technical conference or workshop.

The Commission Orders

Consistent with our review and verification of the sample pipeline Form No. 6 data, and the application of the previously approved Order No. 561 methodology to that data, the Commission determines that the

appropriate oil pricing index for the next five years, July 1, 2006 through June 30, 2011, should be PPI plus a 1.3 percent adjustment.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 06–2964 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1002

[Docket No. VETS–U–04]

RIN 1293–AA09

Uniformed Services Employment and Reemployment Rights Act of 1994; Correction

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Correcting Amendment.

SUMMARY: This document contains a correction to the final regulations implementing the Uniformed Services Employment and Reemployment Act of 1994 (USERRA), which were published in the **Federal Register** on December 19, 2005. Congress enacted USERRA to protect the rights of persons who voluntarily or involuntarily leave employment positions to undertake military service. USERRA authorizes the Secretary of Labor to prescribe rules implementing the law as it applies to States, local governments, and private employers. 38 U.S.C. 4331(a). The Department, through the Veterans' Employment and Training Service (VETS), promulgated rules under this statutory authority to provide guidance to employers and employees concerning their rights and obligations under USERRA. The final rule contained an incorrect citation to the Agency's statutory authority to promulgate regulations under USERRA. This document corrects the final regulations by revising the statutory authority citation.

DATES: Effective on March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Investigations and Compliance Division, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1312, Washington, DC 20210, *Wilson.Robert@dol.gov,* (202) 693–4719 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2004, VETS issued proposed regulations to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), 38 U.S.C. 4301–4334. VETS invited written comments on the proposed regulations from interested parties, and invited comment on specific issues. VETS considered all timely comments received in response to the proposed regulations, and published final regulations in the **Federal Register** on December 19, 2005.

Need for Correction

Section 4331 of USERRA authorizes the Secretary of Labor to prescribe regulations implementing the law as it applies to States, local governments, and private employers. 38 U.S.C. 4331(a). This statutory authority is noted correctly in two places in the preamble to the USERRA final rule. *See* 70 FR 75246 and 70 FR 75292. However, an incorrect reference to the statutory authority was inadvertently inserted in the text of the regulations. *See* 70 FR 75295. To correct this error, this document substitutes the correct statutory authority for that listed in the text of the final regulations.

List of Subjects in 20 CFR Part 1002

Labor, Veterans, Pensions.

■ Accordingly, 20 CFR part 1002 is corrected by making the following correcting amendment:

PART 1002—[AMENDED]

■ 1. The authority citation is corrected to read as follows:

Authority: Section 4331(a) of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4331(a) (Pub. L. 103–353, 108 Stat. 3150).

U.S. Department of Labor.

Veterans' Employment and Training Service.

Charles S. Ciccolella,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 06–2966 Filed 3–27–06; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

25 CFR Part 1200

RIN 1035–AA05

American Indian Trust Fund Management Reform Act; Technical Amendments

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Final Rule.

SUMMARY: The Office of the Special Trustee for American Indians (OST) is revising its regulations to update references to agency names, addresses, and position titles. This action is editorial in nature and is intended to improve the accuracy and clarity of the OST's regulations.

DATES: *Effective Date:* March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Lorie Curtis, Office of Trust Regulations, Policies and Procedures, Office of the Special Trustee for American Indians, 4400 Masthead Street NE., Albuquerque, New Mexico 87109; phone 505–816–1086; facsimile 505–816–1377.

SUPPLEMENTARY INFORMATION: The regulations promulgated by the Department of the Interior in 25 CFR part 1200 describe, among other things, the processes by which Indian tribes can manage tribal funds currently held in trust by the United States under the American Indian Trust Fund Management Reform Act. The regulations contain references to organizations, positions, and addresses that changed in 2003. We are updating these regulations to correct the references and to make other minor editorial changes to improve clarity.

Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary and contrary to the public interest. Because this amendment makes only minor editorial changes, no public comment is necessary.

Determination To Make Rule Effective Immediately

Because this amendment makes only minor editorial changes, the Department

has determined it appropriate to make the rule effective immediately by waiving the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). It is in the public interest and in the interest of the Indian tribes not to delay implementation of this amendment. Accordingly, this amendment is issued as a final rule effective immediately.

Compliance With Laws and Executive Orders

The Department has determined that this rule complies with all requirements of the following laws and Executive Orders:

(1) Executive Order 12866 (Regulatory Planning and Review);

(2) Regulatory Flexibility Act (5 U.S.C. 601, et seq.);

(3) Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));

(4) Unfunded Mandates Reform Act (2 U.S.C. 1531, et seq.);

(5) Executive Order 12630 (Takings);

(6) Executive Order 13132 (Federalism);

(7) Executive Order 12988 (Civil Justice Reform);

(8) Executive Order 13175 (Consultation with Indian tribes);

(9) Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*); and

(10) National Environmental Policy Act (42 U.S.C. 4321–4347).

List of Subjects in 25 CFR Part 1200

Indians, Trusts and trustees, Trust funds.

Dated: February 27, 2006.

Ross O. Swimmer,

Special Trustee for American Indians.

■ For the reasons set forth in the preamble, part 1200 of title 25 of the Code of Federal Regulations is amended as follows:

PART 1200—AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT

■ 1. The authority for part 1200 continues to read as follows:

Authority: 25 U.S.C. 4001.

■ 2. Section 1200.2 is amended by:
■ A. Removing the definition of ''Area Director'';
■ B. Removing the definition of ''OTFM''; and
■ C. Adding in alphabetical order a definition of ''Fiduciary Trust Officer'' and ''Regional Director'' to read as follows:

§ 1200.2 Definitions.

* * * * *

Fiduciary Trust Officer means the designated OST official at the agency or regional office.

* * * * *

Regional Director means the Bureau of Indian Affairs official in charge of a Regional Office.

* * * * *

■ 3. Revise § 1200.6 to read as follows:

§ 1200.6 How could a tribe receive future income directly rather than have the government continue to collect it?

If a tribe wishes to receive future income directly, the tribe may contact a Fiduciary Trust Officer located at the agency or regional office.

■ 4. Section 1200.7 is amended by:
■ A. Redesignating the three sentences in the section as paragraphs (a), (b), and (c); and
■ B. Revising redesignated paragraph (a) to read as follows:

§ 1200.7 Information collection.

(a) The information collection requirements contained in subpart B of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*, and assigned OMB Control Number 1035–0003. Information is also collected in subpart D through the use of the following standard forms:

(1) SF 424, Application for Federal Assistance, OMB Control Number 0348–0043; and

(2) SF 424A, Budget Information, OMB Control Number 0348–0044.

* * * * *

■ 5. In § 1200.13, the first and third sentences are revised to read as follows:

§ 1200.13 How does a tribe apply to withdraw funds?

To withdraw funds, a tribe must submit four copies of its application and the attachments listed in this section to: Director, Office of External Affairs, Office of the Special Trustee for American Indians, Department of the Interior, MS–5140, 1849 C Street NW., Washington, DC 20240. * * * When we determine that the application is complete, we will send copies to the appropriate agency superintendent and regional director, and to the Special Trustee and the Solicitor. * * *

* * * * *

■ 6. Section 1200.14 is amended by removing paragraphs (j)(1) and (j)(2) and revising paragraph (j) to read as follows:

§ 1200.14 What must the Tribal Management Plan contain?

* * * * *

(j) A tribal council agreement to provide an annual audit and report on performance of withdrawn funds to the tribal membership. The agreement must include a description of the steps (including audit performance and reporting) the tribe will take to ensure its membership that the tribe is continuing to comply with the terms of the plan submitted and approved pursuant to judgment fund limitations (if any) and/or the terms of the Act.

* * * * *

§ 1200.15 [Amended]

■ 7. Amend 1200.15(b) by removing the word ''area'' and adding the word ''regional'' in its place.

[FR Doc. 06–2976 Filed 3–27–06; 8:45 am]

BILLING CODE 4310–2W–P

Proposed Rules

Federal Register
Vol. 71, No. 59
Tuesday, March 28, 2006

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 381, and 442

[Docket No. 04–041P; FDMS Docket Number FSIS–2005–0032]

RIN #0583–AD17

Determining Net Weight Compliance for Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations in order that they reference the revised version of the National Institute of Standards and Technology (NIST) Handbook 133 that contains standards for determining the reasonable variations allowed for the declared net weight on labels of immediate containers of meat and poultry products; the procedures to be used to determine the net weight and net weight compliance of meat and poultry products; and related definitions. The Agency also is proposing to consolidate the separate net weight regulations for meat and poultry products in a new CFR part, applicable to both meat and poultry products.

DATES: Submit comments by May 30, 2006.

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

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2005–0032 to submit or view public comments and to view supporting and related materials available electronically.
- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received by mail or electronic mail must include the Agency name and docket number 04–041P. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Robert C. Post, PhD, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, FSIS, by telephone at (202) 205–0279 or by fax at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470), and the regulations that implement these Acts. The FMIA and the PPIA require that packages of meat and poultry products bear an accurate statement of the quantity of their contents in terms of weight, measure, or numerical count (21 U.S.C. 601(n)(5) and 453(b)(5)). The FMIA and PPIA also provide the Secretary of Agriculture with the authority to prescribe standards of fill of containers for such articles (21 U.S.C. 607(c)(2), 457 (b)(2)) that are not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–392). In implementing regulations, FSIS has elected to enforce these provisions of the Acts through the adoption of the NIST standards established for determining compliance with the net weight contents statement of packaged goods that are enumerated in NIST Handbook 133. Consequently, FSIS has incorporated, by reference, the appropriate NIST standards in the Federal meat and poultry inspection regulations.

NIST was established by Congress in 1988 to assist industry in the development of technology to improve product quality, to modernize manufacturing processes, to ensure product reliability, and to facilitate rapid commercialization of products based on new scientific discoveries. NIST's basic functions include developing, maintaining, and retaining custody of the national standards of measurement and providing the means and methods for comparing standards used in science, engineering, manufacturing, commerce, industry, and education with the standards adopted or recognized by the Federal Government.

NIST Handbook 133 is a procedural guide for compliance testing of net content statements on packaged goods. FSIS has elected to make mandatory the NIST standards in Handbook 133 regarding the determination of the reasonable variations allowed from the declared net weight on labels of immediate containers of meat and poultry products, the procedures to be used to determine net weight and net weight compliance for meat and poultry products, and related definitions. Consequently, FSIS currently incorporates, by reference, the NIST standards from Handbook 133 in its meat and poultry inspection regulations (9 CFR parts 317.18 through 317.22 and 381.121a through 381.121e respectively). In January 2002, NIST issued a revised Handbook 133. Therefore, it is necessary for FSIS to amend the meat and poultry inspection regulations to incorporate by reference the revised NIST Handbook 133 and the standards set forth in it regarding the determination of the reasonable variations allowed, definitions, and procedures used to determine net weight, and net weight compliance of packaged goods. The standards in revised Handbook 133 that are being proposed to be incorporated by

reference in FSIS' meat and poultry inspection regulations remain substantively unchanged from those currently incorporated by reference in FSIS' regulations.

FSIS is also proposing to consolidate the separate net weight regulations for meat and poultry products in a new CFR part 442 that will be applicable to both meat and poultry products. Therefore, FSIS is proposing to move the provisions in §§ 317.18 through 317.22 and the provisions in §§ 381.121a through 381.121e to new part 442. Sections 317.20 and 381.121c incorporate NIST Handbook 44 by reference. Therefore, FSIS is proposing to move the provisions that incorporate NIST Handbook 44 by reference to new CFR part 442. FSIS is proposing to incorporate the same version of Handbook 44 that is currently incorporated by reference in the regulations: ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' 1999 Edition, November 1988.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

There are no costs associated with this proposal. The intent of this proposed rule is to amend the meat and poultry inspection regulations to incorporate by reference the standards in revised Handbook 133, which are not substantively changed from those in the version of Handbook 133 that is currently reflected in FSIS' meat and poultry inspection regulations regarding the procedures to be used to determine the net weight of, and net weight compliance for, meat and poultry products. In addition, FSIS is proposing to consolidate its meat and poultry net weight regulations into a new part 442 which will be applicable to both meat and poultry products.

FSIS has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule reflects the recent changes in the NIST Handbook 133 standards for determining net weight compliance for meat and poultry products.

Paperwork Reduction Act

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or record-keeping requirements. The information collection was approved under OMB number 0583–0094. This proposed rule contains no other paperwork requirements.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of communicating electronically with the government to the maximum extent possible. The Agency will ensure that all forms used by the establishments are made available electronically.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

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

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

9 CFR Part 424

Food labeling, Incorporation by reference, Meat inspection, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS proposes to amend 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§§ 317.18 through 317.22 [Removed and Reserved].

2. Remove and reserve §§ 317.18 through 317.22.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§§ 381.121a through 381.121e [Removed and Reserved].

4. Remove and reserve §§ 381.121a through 381.121e.

Subchapter E—Regulatory Requirements Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

5. Subchapter E is amended by adding a new part 442 to read as follows:

PART 442—QUANTITY OF CONTENTS LABELING AND PROCEDURES AND REQUIREMENTS FOR ACCURATE WEIGHTS

Sec.

442.1 Quantity of contents labeling
442.2 Definitions and procedures for determining net weight compliance
442.3 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection
442.4 Testing of scales
442.5 Handling of failed product

Authority: 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 442.1 Quantity of contents labeling.

This part prescribes the procedures to be followed for determining net weight compliance and prescribes the reasonable variations allowed from the declared net weight on the labels of immediate containers of products in accordance with 9 CFR 317.2(c)(4), 317.2(h), and 381.121.

§ 442.2 Definitions and procedures for determining net weight compliance.

(a) For the purpose of § 442.1 of this part, the reasonable variations allowed, the definitions, and the procedures to be used in determining net weight and net weight compliance are presented in the National Institute of Standards and Technology (NIST) Handbook 133, ''Checking the Net Contents of Packaged Goods,'' Fourth Edition, January 2002, which is incorporated by reference. Those provisions are considered mandatory requirements. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited herein will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) The following NIST Handbook 133 requirements are not incorporated by reference.

Chapter 2—Basic Test Procedure—Gravimetric Testing

2.4 Borax

Chapter 3—Test Procedures—For Packages Labeled by Volume

3.5 Mayonnaise and Salad Dressing
3.7 Pressed and Blown Glass Tumblers and Stemware
3.8 Volumetric Test Procedures for Paint, Varnish, and Lacquers—Non Aerosol
3.9 Testing Viscous Materials—Such as Caulking Compounds and Pasters
3.10 Peat Moss
3.11 Mulch and Soils Labeled by Volume
3.12 Ice Cream Novelties
3.13 Fresh Oysters Labeled by Volume
3.14 Determining the Net Contents of Compressed Gas Cylinders
3.15 Volumetric Test Procedures for Packaged Firewood with a Labeled Volume of 133 L (4 Cu Ft) or Less
3.16 Boxed Firewood
3.17 Crosshatched Firewood
3.18 Bundles and Bags of Firewood

Chapter 4—Test Procedures—Packages Labeled by Count, Linear Measure, Area, Thickness, and Combinations of Quantities

4.5 Paper Plates and Sanitary Paper Products
4.6 Special Test Requirements for Packages Labeled by Linear or Square Measure (Area)
4.7 Polyethylene sheeting
4.8 Packages Labeled by Linear or Square (Area) Measure
4.9 Bailer Twine—Test Procedure for Length
4.10 Procedure for Checking the Area Measurement of Chamois

§ 442.3 Scale requirements for accurate weights, repairs, adjustments, and replacements after inspection.

(a) All scales used to weigh meat and poultry products sold or otherwise distributed in commerce in federally inspected meat and poultry establishments will be installed, maintained, and operated in a manner that ensures accurate weights. Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' 1999 Edition, November 1988, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited here will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) All scales used to weigh meat or poultry products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act and section 5(c) of the Poultry Products Inspection Act shall be of sufficient capacity to weigh the entire unit or package.

(c) No scale will be used at a federally inspected establishment to weigh meat or poultry products unless it has been found upon test and inspection, as specified in NIST Handbook 44 to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been reinspected and retested by a USDA official, or a State or local government weights and measures official, or a State registered or licensed scale repair firm or person, and it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a ''Retain'' tag on a scale, the tag can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

§ 442.4 Testing of scales.

(a) The operator of each official establishment that weighs meat or poultry food products will cause such scales to be tested for accuracy in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have alternative documented procedures showing that the scale has been tested for accuracy in accordance with the requirements of NIST Handbook 44.

§ 442.5 Handling of failed product.

Any lot of product that is found to be out of compliance with net weight requirements upon testing in accordance with the methods prescribed

in § 442.2 of this subchapter shall be handled as follows;

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section in accordance with the requirements of this part.

(b) A lot tested outside an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking will not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done in Washington, DC, on March 22, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–4420 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–DM–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 613, and 614

RIN 3052–AC15

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Eligibility and Scope of Financing; Loan Policies and Operations; Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to reduce regulatory burden on the Farm Credit System (FCS or System) by repealing or revising five regulations. The proposed rule would also correct outdated and erroneous cross-references in two regulations. These revisions provide System banks and associations with greater flexibility concerning stock ownership of service corporations, employee reporting under standards of conduct rules, domestic lending to cooperatives, and real property evaluations for certain loans.

DATES: Please send your comments to us by May 30, 2006.

ADDRESSES: Comments may be sent by electronic mail to *regcomm@fca.gov,* through the Pending Regulations section of our Web site at *http://www.fca.gov* or through the Government-wide *http://www.regulations.gov* portal. You may also send written comments to Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784.

You may review copies of all comments we receive at our office in McLean, Virginia or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Jacqueline R. Melvin, Associate Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434; or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

On May 16, 2003, we published a notice in the **Federal Register** at 68 FR 26551 that invited the public to identify existing regulations and policies that impose unnecessary burdens on the FCS. We specifically asked for comments on those regulations and policies that are ineffective, duplicate other governmental requirements, or impose burdens that are greater than the benefits received. We took this action in our continuing effort to improve the regulatory environment so the System can better serve farmers, ranchers, aquatic producers and harvesters, cooperatives, and other rural residents.

We received 19 comment letters: 11 from System associations, five from Farm Credit banks, one from the Farm Credit Council on behalf of its membership, one from CoBank, ACB's Northeast Farm Credit Regional Council, and one from a private citizen. In response, we are proposing to: (1) Revise and clarify who may own stock in an FCS service corporation; (2) expand the time for a newly hired employee to report matters to an institution's standards of conduct official; (3) eliminate the 10-percent limit on dividends in determining the eligibility of a cooperative to borrow from a System lender under title III of the Farm Credit Act of 1971, as amended (Act); (4) eliminate the requirement for a Uniform Standards of Professional Appraisal Practices (USPAP) compliant real property appraisal for business loans between $250,000 and $1 million that are not otherwise exempt under our rules; and (5) repeal an outdated and obsolete regulation on bankers' acceptance financing. We are also proposing to correct three cross-reference errors affecting two regulations governing title III lending.

Contemporaneously with this proposed rule, we are publishing a notice in the **Federal Register** explaining how we addressed, or will address, all remaining comments we received.

II. Analysis of Changes and Comments by Section

Section 611.1135—Incorporation of Service Corporations

Section 4.25 of the Act, provides that any System bank or association, or two or more such institutions, may organize a federally chartered corporation for the purpose of performing functions and services for or on behalf of the organizing institutions. Current § 611.1135(a) provides that ''[a]ll Farm Credit banks and associations are eligible to become stockholders in your service corporation.'' A bank commented that:

> The existing requirement that each bank or association be eligible to become a stockholder of each 4.25 service corporation is not required by the Act and may limit the usefulness of these corporations to FCS institutions that might wish to organize them.

We agree that the Act does not require that ''each'' service corporation must make its stock available to ''each'' System bank and association. To clarify, we are proposing to amend the relevant sentence of § 611.1135(b) to read:

> Your service corporation may issue voting and non-voting stock to one or more Farm Credit banks and associations.

This should clarify that while each bank and association has the statutory authority to organize (and own stock in) section 4.25 service corporation, each service corporation is not required to offer stock to every System bank and association.

Section 612.2155—Employee Reporting

Existing § 612.2155(d) provides:

> A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

CoBank, ACB stated that:

This provision requires newly hired employees to complete a standards of conduct report within 30 days after accepting an offer for employment. This is often impractical. It is not uncommon for offers of employment to be accepted 2 to 4 months before employment is to begin. Also, it may not be wise to share the list of bank's borrowers who are publicly traded long before the start date, as the prospective employee can always renege on the offer/acceptance. Finally, the standards of conduct material have more meaning to the new employee nearer to the employee's start date.

We believe that this comment has merit and we propose to amend § 612.2155(d) to adopt CoBank's proposal to revise the regulation to require reporting no later than 5 business days after the new employee's start date.

Section 613.3100—Domestic Lending—Banks Operating Under Title III of the Farm Credit Act

Section 3.8(a) of the Act provides that an agricultural cooperative is eligible for financing from a title III lender if it conforms to either of the two following requirements:

(1) No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) Does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration * * *.

Current § 613.3100(b)(1)(iii) implementing section 3.8 of the Act provides that an eligible cooperative must comply with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable state law, whichever is less.

CoBank, ACB stated that:

This 10-percent limitation is overly restrictive with respect to new forms of cooperatives, such as those organized under the Wyoming Processing Cooperative statute (Wyo. Stat. § 17–10–201~.) or the similar cooperative statute recently enacted in Minnesota. These statutes specifically permit the formation of cooperatives with both patron members (producers with delivery obligations) and non-patron investor members. While patron members continue to follow the more traditional cooperative model with respect to voting and dividends, the investor members vote on the basis of equity ownership and have no specific limit on dividends. This creates eligibility problems that might be avoided if the 10-percent dividend limitation were deleted. Since these organizations are still fundamentally cooperatives, CoBank, ACB should be able to finance them. The statute clearly gives FCA broad discretion in setting the dividend limitation.

Unlike prior law, the Act does not incorporate any definition of cooperative or otherwise attempt to define ''cooperative.'' [1] A review of past FCA rulemaking in this area indicates that the 10-percent limitation was based solely on FCA policy.[2]

As pointed out by CoBank, ACB, cooperatives have continued to evolve and we believe that so long as an entity is considered a ''cooperative'' under state law and continues to meet the eligibility requirements of the Act, FCA regulations should not impose additional restrictions on lending eligibility. Therefore, we are proposing to delete the 10-percent dividend limitation from our rules and instead require that to be eligible, a cooperative restrict dividends on stock or membership capital to the maximum percentage per year permitted by applicable State law.

Section 614.4265—Real Property Evaluations

Current § 614.4265(c) provides:

Where real estate appraisals or real estate collateral valuations for business loans in excess of $250,000 that would not otherwise be exempted under § 614.4260(c) are required, such evaluations shall be completed in accordance with the USPAP and shall include a legal description of the subject property.

Several commenters stated that this requirement is unduly burdensome and places System lenders at a competitive disadvantage because non-System lenders are not required to perform USPAP appraisals for these loans. Commenters added that the requirement does not necessarily ensure greater safety and soundness because a similar level of analysis is required for collateral evaluations.

We agree with the commenters that removing this provision and putting our rules in accord with those of other financial institution regulators will not adversely impact the System's safety and soundness. Therefore, we are proposing to delete § 614.4265(c).

Section 614.4710—Bankers' Acceptance Financing

CoBank, ACB asked us to clarify the limited scope of § 614.4710 that was originally adopted in 1982 and pertained primarily to the rediscount of bankers' acceptances. Section 614.4710(a) and (c) authorize the Federal Farm Credit Banks Funding Corporation to accept drafts or bills of exchange drawn upon banks for cooperatives and agricultural credit banks. Section 614.4710(b) provides the basis on which a bank for cooperatives or agricultural credit bank may purchase participations in discounted acceptances of another bank for cooperatives or agricultural credit bank.

Because the System has only one remaining agricultural credit bank that is also a bank for cooperatives, paragraph (b) clearly is no longer relevant or needed. Additionally, the type of transaction contemplated by paragraphs (a) and (c) of the rule has not taken place for many years (if ever). Therefore, we are proposing to delete § 614.4710 in its entirety.

III. Technical Corrections

In response to comments, we are proposing to correct outdated and erroneous cross-references in §§ 613.3100(d)(1) and 614.4010(d)(1) and (d)(2) of our regulations.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflicts of interest, Crime, Investigations, Rural areas.

12 CFR Part 613

Agriculture, Banks, banking, Credit, Rural areas.

[1] *See* former 11 U.S.C. 1134c (repealed 1971) (providing that Banks for Cooperatives could make loans to ''cooperative associations as defined in the Agricultural Marketing Act * * *.'') The Agricultural Marketing Act (incorporating the Capper-Volstead Act provisions) includes an 8-percent limit on dividends. *See* 7 U.S.C. 291.

[2] *See* 47 FR 12136 (March 22, 1982).

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 612, 613 and 614 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2013, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart I—Service Organizations

2. Amend § 611.1135 by revising paragraph (b) to read as follows:

§ 611.1135 Incorporation of service corporations.

* * * * * *

(b) *Who may own equities in your service corporation*?

(1) Your service corporation may only issue voting and non-voting stock to:

(i) One or more Farm Credit banks and associations; and

(ii) Persons that are not Farm Credit banks or associations, provided that at least 80 percent of the voting stock is at all times held by Farm Credit banks or associations.

(2) For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any state or territory thereof.

* * * * *

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

3. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

Subpart A—Standards of Conduct

4. Amend 612.2155 by revising paragraph (d) to read as follows:

§ 612.2155 Employee reporting.

* * * * *

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official 5 business days after starting employment and thereafter shall comply with the requirements of this section.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

5. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

6. Amend § 613.3100 by revising paragraphs (b)(1)(iii)(B) and (d)(1) to read as follows:

§ 613.3100 Domestic lending.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) The cooperative restricts dividends on stock or membership capital to the maximum percentage per year permitted by applicable state law.

* * * * *

(d) *Water and waste disposal facilities.*

(1) *Eligibility.* A cooperative or a public agency, quasi public agency, body, or other public or private entity that, under the authority of state or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(4) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

7. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

8. Amend § 614.4010 by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * *

(d) * * *

(1) Eligible cooperatives, as defined in § 613.3100(b)(1), in accordance with §§ 614.4200, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3100(b)(2), in accordance with §§ 614.4200, 614.4231, and 614.4232;

* * * * *

Subpart F—Collateral Evaluation Requirements

§ 614.4265 [Amended]

9. Amend § 614.4265 by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), and (h) as (c), (d), (e), (f), and (g), respectively.

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Removed and reserved]

10. Remove and reserve § 614.4710.

Dated: March 23, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–4479 Filed 3–27–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM341; Notice No. 25–06–02–SC]

Special Conditions: Airbus Model A380–800 Airplane, Loading Conditions for Multi-Leg Landing Gear

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the

configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding loading conditions for multi-leg landing gear. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM341, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM341. 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: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 Issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380–800 airplane, and no changes are required based on the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

The A380 has a multi-leg landing gear arrangement consisting of a nose gear, two wing mounted gear, and two body mounted gear. This arrangement is different from the simpler, conventional landing gear arrangement envisioned by the landing and ground load requirements of 14 CFR part 25. Those regulations assume a landing gear arrangement comprising a three point suspension system (two main gear and a nose or tail gear) in which load sharing between the landing gear can be determined without considering the flexibility of the airframe. In fact, § 25.477 states that certain Ground Load provisions apply only to ''airplanes with conventional arrangements of main and nose gears, or main and tail gears, when normal operating techniques are used.''

For a five point suspension system, like that of the A380, load sharing between landing gear must be determined in a rational manner considering the flexibility of the

airplane. Therefore, the landing and ground load requirements of 14 CFR part 25 are not valid, and special conditions specifying the load conditions appropriate to the multi-leg landing gear on the A380 are necessary.

Proposed regulatory changes pertaining to landing and ground handling structural design loads have been developed by a working group of the Aviation Rulemaking and Advisory Committee (ARAC). The proposal, dated May 30, 2003, provides design load requirements for various landing gear configurations, including the multi-leg landing gear configuration of the A380.

The special conditions proposed in this document are based upon the regulatory changes proposed by the ARAC working group, as are the special conditions issued by the European Aviation Safety Agency for its certification of the A380. For ease of reference, the special conditions proposed in this document are organized in the same manner as in the ARAC recommendation. Since the changes proposed by ARAC cover various landing gear configurations, certain paragraphs of the proposal are not applicable to the A380. These paragraphs are so indicated in the section of this notice, entitled ''The Proposed Special Conditions.''

This notice contains two groups of proposed special conditions. The first group (Group A) addresses Landing Conditions and includes proposed special conditions pertaining to the following:

A.1. Landing load conditions and assumptions,
A.2. Symmetric landing load conditions,
A.3. One-gear landing conditions, and
A.4. Side load conditions.

The second group (Group B) addresses other conditions and tests, including Ground Handling Conditions. It includes proposed special conditions pertaining to the following:

B.1. Ground handling conditions,
B.2. Taxi, takeoff and landing roll,
B.3. Braked roll conditions,
B.4. Nose-wheel yaw and steering,
B.5. Pivoting,
B.6. Reversed braking,
B.7. Ground load: unsymmetrical loads on multiple-wheel units, and
B.8. Shock absorption tests.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

A. Landing Conditions

1. Landing Load Conditions and Assumptions

In lieu of §§ 25.473 and 25.477, the following special conditions apply:

(a) The landing gear and airplane structure must be investigated for the landing conditions specified in Special Conditions A.2., A.3., and A.4. For these conditions, the airplane is assumed to contact the ground—

(1) In the attitudes defined in Special Conditions A.2. and A.3.

(2) At the descent velocities defined in Special Conditions A.2. and A.3. The prescribed descent velocities may be modified, if it is shown that the airplane has design features that make it impossible to develop these velocities.

(b) Airplane lift, not exceeding airplane weight, may be assumed, unless the presence of systems or procedures significantly affects the lift.

(c) The method of analysis of airplane and landing gear loads must take into account at least the following elements:

(1) Landing gear dynamic characteristics.

(2) Spin-up and spring back.

(3) Rigid body response.

(4) Structural dynamic response of the airframe, if significant.

(5) Each approved tire with nominal characteristics.

(d) The landing gear dynamic characteristics must be validated by tests as defined in Special Condition B.8., paragraph (a).

(e) The coefficient of friction between the tires and the ground may be established by considering the effects of skidding velocity and tire pressure. However, this coefficient of friction need not be more than 0.8.

2. Symmetric Landing Load Conditions

In lieu of §§ 25.479 and 25.481, the following special conditions apply:

The landing gear and airframe structure must be designed for the dynamic landing conditions of Special Condition A.2., using the assumptions specified in Special Condition A.1.

(a) The airplane is assumed to contact the ground—

(1) With an airspeed corresponding to the attitudes specified in paragraph (c) of this special condition in the following conditions: (i) Standard sea level conditions, and (ii) at maximum approved altitude in a hot day temperature of 22.8°C (41°F) above standard.

The airspeed need not be greater than $1.25V_{S0}$, or less than V_{S0}, where V_{S0} = the 1-g stalling speed based on C_{NAmax} at the appropriate weight and in the landing configuration. The effects of increased ground contact speeds must be investigated to account for downwind landings for which approval is desired.

(2) With a limit descent velocity of 3.05 m/sec (10 fps) at the design landing weight (the maximum weight for landing conditions at maximum descent velocity); and,

(3) With a limit descent velocity of 1.83 m/sec (6 fps) at the design takeoff weight (the maximum weight for landing conditions at a reduced descent velocity).

(*b) Not applicable to A380.*

(c) For airplanes with nose wheels, the conditions specified in this paragraph must be investigated assuming the following attitudes:

(1) An attitude in which the nose and main wheels are assumed to contact the ground simultaneously, as shown in 14 CFR part 25, Appendix A, Figure 2. For this condition, airplane pitching moment is assumed to be reacted by the nose gear.

(2) An attitude corresponding to the smallest pitch attitude at which the main landing gear reach maximum vertical compression before impact on the nose gear.

(3) An attitude corresponding to either the stalling angle or the maximum angle allowing clearance with the ground by each part of the airplane other than any wheel of the main landing gear, in accordance with 14 CFR part 25, Appendix A, Figure 3, whichever is less.

(4) For aircraft with more than two main landing gear or more than two wheels per main landing gear unit, each

intermediate attitude that may be critical.

(d) For airplanes with more than two main landing gear, landing must be considered on a level runway and, as a separate condition, on a runway having a convex upward shape that may be approximated by a slope of 1.5% at main landing gear stations.

3. One-Gear Landing Conditions

In lieu of § 25.483, the following special condition applies:

(a) Not applicable to the A380.

(b) For airplanes with more than two main landing gear, a dynamic rolled landing condition on a level runway must be considered, using the assumptions specified in Special Condition A.1., in which—

(1) The airplane is assumed to contact the ground—

(i) At the maximum roll angle attainable within the geometric limitations of the airplane; (however, the roll angle need not exceed 10 degrees),

(ii) With a limit descent velocity of 2.13 m/sec (7 fps) at the design landing weight,

(iii) At the critical pitch attitudes and corresponding contact velocities obtained under Special Conditions No. A.2.

(2) The dynamic analysis must include the contact of all gear outboard of the airplane centerline on the side of first gear impact. This condition need not apply to the gear on the opposite side of the airplane.

(3) Side loads (in the ground reference system) may be assumed to be zero.

(4) Airplane rolling moments shall be reacted by airplane inertia forces and by subsequent main gear reactions.

4. Side Load Conditions

In lieu of § 25.485, the following special conditions apply:

For the side load conditions specified in paragraphs (a) and (b) below, the vertical and drag loads are assumed to act at the wheel axle centerline, and the side loads are assumed to act at the ground contact point. The gear loads are balanced by inertia of the airplane.

(a) The most severe combination of loads that are likely to arise during a lateral drift landing must be taken into account. In the absence of a more rational analysis of this condition, the following must be investigated:

(1) A separate condition for each gear, for which the vertical load is assumed to be 75% of the maximum vertical reaction obtained in Special Condition A.2. or A.3., whichever is greater. For airplanes with more than two main landing gear, the vertical load on the other gear is assumed to be 75% of the correlated vertical load for those gear in the same condition. The vertical loads for each gear are combined with drag and side loads of 40% and 25%, respectively, of the vertical load.

(2) The airplane is assumed to be in the attitude corresponding to the maximum vertical reaction obtained in Special Condition A.2 or A.3., whichever is greater.

(3) The shock absorber and tire deflections must be assumed to be 75% of the deflection corresponding to the vertical loads obtained in Special Condition A.2., whichever is greater.

(b) In addition to the side load conditions specified in paragraph (a) above, the following side load conditions must be considered for each main landing gear unit:

(1) A separate condition for each main landing gear unit, for which the vertical load is assumed to be 50% of the maximum vertical reaction obtained in Special Condition A.2. For airplanes with more than two main gear, the vertical load on other gear is assumed to be 50% of the correlated vertical load for those gear in the same condition. The vertical loads for each gear are combined with the side loads specified in paragraph (b)(3) or (b)(4) of this special condition, as applicable.

(2) The airplane is assumed to be in the attitude corresponding to the maximum vertical reaction obtained in Special Conditions A.2.

(3) For the outboard main landing gear, side loads of 0.8 of the vertical reaction (on one side) acting inward and 0.6 of the vertical reaction (on the other side) acting outward as shown in 14 CFR part 25, Appendix A, Figure 5.

(4) For airplanes with more than two main landing gear, the side load of each inboard main landing gear is determined by a linear interpolation between 0.8 and 0.6 of the vertical gear load on that gear, depending on the lateral position of that gear relative to the outboard main landing gear. The side loads act in the same direction as the outboard main gear side loads.

(5) The drag loads may be assumed to be zero.

(6) The shock absorber and tire deflections must be assumed to be 50% of the deflection corresponding to the vertical loads of Special Conditions A.2.

B. Ground Handling Conditions

1. Ground Handling Conditions

In lieu of § 25.489, the following special conditions apply:

(a) Unless otherwise prescribed, the landing gear and airplane structure must be investigated for the conditions in § 25.509 and in Special Conditions. B.2, B.3, B.4, B.5, and B.6, as follows:

(1) The airplane must be assumed to be at the design ramp weight (the maximum weight for ground handling conditions);

(2) The airplane lift must be assumed to be zero; and

(3) The shock absorbers and tires may be assumed to be in their static position.

(b) For airplanes with more than two main landing gears, the airplane must be considered to be on a level runway and, as a separate condition, on a runway having a convex upward shape that may be approximated by a slope of 1.5% at the main landing gear stations. The ground reactions must be distributed to the individual landing gear in a rational or conservative manner.

2. Taxi, Takeoff and Landing Roll

In lieu of § 25.491, the following special condition applies:

Within the range of appropriate ground speeds and approved weights, the airplane structure and landing gear are assumed to be subjected to loads not less than those obtained when the aircraft is operating over the roughest ground that may reasonably be expected in normal operation. Steady aerodynamic effects must be considered in a rational or conservative manner.

3. Braked Roll Conditions

In lieu of § 25.493, the following special conditions apply:

(a) Not applicable to A380.

(b)For an airplane with a nose wheel, the limit vertical load factor is 1.2 at the design landing weight and 1.0 at the design ramp weight. A drag reaction equal to the vertical reaction, multiplied by a coefficient of friction of 0.8, must be combined with the vertical reaction and applied at the ground contact point of each wheel with brakes. The following two attitudes, in accordance with14 CFR part 25, Appendix A, Figure 6, must be considered:

(1) The level attitude with the wheels contacting the ground and the loads distributed between the main and nose gear. Zero pitching acceleration is assumed.

(2) The level attitude with only the main gear contacting the ground and with the pitching moment resisted by angular acceleration.

(c) An airplane equipped with a nose gear must be designed to withstand the loads arising from the dynamic pitching motion of the airplane due to sudden application of maximum braking force. The airplane is considered to be at design takeoff weight with the nose and main gears in contact with the ground, and with a steady-state vertical load

factor of 1.0. The steady-state nose gear reaction must be combined with the maximum incremental nose gear vertical reaction caused by the sudden application of maximum braking force as described in paragraphs (b) and (e) of this paragraph.

(d) Not applicable to the A380.

(e) A drag reaction lower than that prescribed in Special Condition B.3 may be used if it is substantiated that an effective drag force of 0.8 times the vertical reaction cannot be attained under any likely loading condition.

4. Nose-Wheel Yaw and Steering

In lieu of § 25.499, the following special conditions apply:

(a) A vertical load factor of 1.0 at the airplane center of gravity and a side component at the nose wheel ground contact equal to 0.8 of the vertical ground reaction at that point are assumed.

(b) With the airplane assumed to be in static equilibrium with the loads resulting from the use of brakes on one side of the main landing gear system, the nose gear, its attaching structure, and the fuselage structure forward of the center of gravity must be designed for the following loads:

(1) A vertical load factor at the center of gravity of 1.0.

(2) For wheels with brakes applied, the coefficient of friction must be 0.8. Drag loads are balanced by airplane inertia. Airplane pitching moment is reacted by the nose gear.

(3) Side and vertical loads at the ground contact point on the nose gear that are required for static equilibrium.

(4) A side load factor at the airplane center of gravity of zero.

(c) If the loads prescribed in paragraph (b) above result in a nose gear side load higher than 0.8 times the vertical nose gear load, the design nose gear side load may be limited to 0.8 times the vertical load, with unbalanced yawing moments assumed to be resisted by airplane inertia forces.

(d) For other than the nose gear, its attaching structure, and the forward fuselage structure, the loading conditions are those prescribed in paragraph (b) above, except that—

(1) A lower drag reaction may be used if an effective drag force of 0.8 times the vertical reaction cannot be reached under any likely loading condition; and

(2) The forward acting load at the center of gravity need not exceed the maximum drag reaction on the main landing gear, determined in accordance with Special Conditions B.3., paragraph (b).

(e) With the airplane at design ramp weight, and the nose gear in any steerable position, the combined application of full normal steering torque and vertical force equal to 1.33 times the maximum static reaction on the nose gear must be considered in designing the nose gear, its attaching structure, and the forward fuselage structure.

5. Pivoting

In lieu of § 25.503, the following special condition applies:

The main landing gear and supporting structure must be designed for the loads induced by pivoting during ground maneuvers in paragraph (b) below.

(a) Not applicable to A380.

(b) For airplanes with more than two main landing gear, the following pivoting conditions must be considered:

(1) The following rational pivoting maneuvers must be considered:

(i) Towing at the nose gear at the critical towing angle, no brakes applied, and separately,

(ii) Application of symmetrical and unsymmetrical forward thrust to aid pivoting, with and without braking by pilot action on the pedals.

(2) The airplane is assumed to be in static equilibrium, with the loads being applied at the ground contact points.

(3) The limit vertical load factor must be 1.0, and

(i) For wheels with brakes applied, the coefficient of friction must be 0.8.

(ii) For wheels with brakes not applied, the ground tire reactions must be based on reliable tire data.

6. Reversed Braking

In lieu of § 25.507, the following special conditions apply:

(a) The airplane must be in a static ground attitude. Horizontal reactions parallel to the ground and directed forward must be applied at the ground contact point of each wheel with brakes. The limit loads must be equal to 0.55 times the vertical load at each wheel or to the load developed by 1.2 times the nominal maximum static brake torque, whichever is less.

(b) For airplanes with nose gears, the pitching moment must be balanced by rotational inertia.

7. Ground Load: Unsymmetrical Loads on Multiple-Wheel Units

In lieu of § 25.511, subparagraphs (d) and (e), the following special conditions apply:

(a) Landing conditions. For one and for two deflated tires, the applied load to each gear unit is assumed to be 60 percent and 50 percent, respectively, of the limit load applied to each gear for each of the prescribed landing conditions. However, for Special Condition A.4., paragraph (b), 100 percent of the vertical load must be applied. Special Condition A.4., paragraph (a)(3), need not be considered with deflated tires.

(b) Taxiing and ground handling conditions. For one and for two deflated tires—

(1) The applied side or drag load factor, or both factors, at the center of gravity must be the most critical value up to 50 percent and 40 percent, respectively, of the limit side or drag load factors, or both factors, corresponding to the most severe condition resulting from consideration of the prescribed taxiing and ground handling conditions;

(2) For the braked roll conditions of Special Conditions B.3., paragraph (b)(2), the drag loads on each inflated tire may not be less than those at each tire for the symmetrical load distribution with no deflated tires;

(3) The vertical load factor at the center of gravity must be 60 percent and 50 percent, respectively, of the factor with no deflated tires, except that it may not be less than 1g; and

(4) The pivoting condition of Special Condition B.5. and the braked roll conditions of Special Condition B.3., paragraph (c), need not be considered with deflated tires.

8. Shock Absorption Tests

In lieu of § 25.723, the following special conditions apply:

(a) The analytical representation of the landing gear dynamic characteristics that is used in determining the landing loads must be validated by energy absorption tests. A range of tests must be conducted to ensure that the analytical representation is valid for the design conditions specified in Special Conditions A.2. and A.3., if applicable.

(1) The configurations subjected to energy absorption tests at limit design conditions must include both the condition with the maximum energy absorbed by the landing gear and the condition with the maximum descent velocity obtained from Special Condition A.2. and A.3.

(2) The test attitude of the landing gear unit and the application of appropriate drag loads during the test must simulate the airplane landing conditions in a manner consistent with the development of rational or conservative limit loads.

(b) Each landing gear unit may not fail in a test, demonstrating its reserve energy absorption capacity, assuming—

(3) The test descent velocity is 120% of that corresponding to the condition specified in paragraph (b)(1) of this paragraph;

(4) The effects of wheel spin-up need not be included.

(c) In lieu of the tests prescribed in this paragraph, changes in previously approved design weights and minor changes in design may be substantiated by analyses based on previous tests conducted on the same basic landing gear system that has similar energy absorption characteristics.

Issued in Renton, Washington, on March 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–2973 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM343; Notice No. 25–06–04–SC]

Special Conditions: Airbus Model A380–800 Airplane, Airplane Jacking Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding airplane jacking loads. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before May 12, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM343, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM343. 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: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380–800 airplane, and no changes are required based on the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law

93–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

The A380 has a multi-leg landing gear arrangement consisting of a nose gear, two wing mounted gear, and two body mounted gear. This arrangement is different from the simpler, conventional landing gear arrangement envisioned by the jacking load requirements of 14 CFR 25.519. Those regulations assume a landing gear arrangement comprising a three point suspension system (two main gear and a nose or tail gear) in which load sharing between the landing gear can be determined without considering the flexibility of the airframe.

For a five point suspension system, like that of the A380, calculations that consider airplane flexibilities are necessary to determine load sharing between landing gear units accurately. (The flexibility of the individual landing gear oleos and of the airplane itself affect how the weight of the airplane is distributed among the individual landing gear units.)

Special conditions are necessary to allow a rational analysis of the jacking condition for the main and body landing gear. (This analysis will include the case of bogie gears where one leg of a bogie is jacked and the other leg is supported on a tripod—which is not addressed by § 25.519.) The applicant has proposed a rational jacking analysis, which makes reasonable or conservative assumptions about the runway configuration and ground wind speeds.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

Part I

In lieu of compliance with 14 CFR 25.519(b)(1), for jacking by the landing gear at the maximum ramp weight of the airplane, the airplane structure maybe designed to withstand the maximum limit loads arising from conditions a. and b. below.

a. The loads arising from jacking by the landing gear may be derived from a rational analysis under both of the following conditions:

1. A ramp crown defined by a 1.5% gradient, the crest of the gradient to be in the most adverse position for the loading of the undercarriage unit in question; and the maximum allowable steady wind for jacking operations from any horizontal direction; and the most adverse combination of oleo leg pressures within service tolerances; and jack(s) at the maximum possible overshoot.

2. A ramp crown defined by a 1.5% gradient, the crest of the gradient to be in the most adverse position for the loading of the undercarriage unit in question; and twice the maximum allowable steady wind for jacking operations from any horizontal direction; and a nominal distribution of oleo leg pressures; and jacking performed in accordance with recommended procedures.

b. The limit horizontal load at the jacking point undercarriage unit may not be less than the higher of that derived from the above rational analysis or 0.33 times the limit static vertical reaction found with the undercarriage unit in question supported at the jacking points with the aircraft in the unjacked position. This load must be applied in combination with the vertical loads arising from the analysis of (a) above.

Part II

Jacking equipment used for the airplane jacking operation must be controlled by a specification that assures that jacking operations are conducted in a manner that is consistent with the provisions of this special condition. Jacking instructions must be developed and incorporated in the Instructions for Continued Airworthiness to assure that the proper jacking equipment is used and that the jacking operation is conducted in a manner consistent with the provisions of this special condition. The jacking instructions may be by means of placards conspicuously located near the jacking points or by other suitable means acceptable to the Administrator.

Issued in Renton, Washington, on March 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4494 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24256; Directorate Identifier 2006–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This proposed AD would require replacing the lightning critical clamp bases of the fuel tank vent system with improved clamp bases; and checking the electrical bond of the modified self-bonding mounting clamps. This proposed AD results from an investigation that revealed the aluminum foil strip on the nylon base of the ground clamps can fracture or separate from the base. We are proposing this AD to ensure that the fuel pipes are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, which could result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by May 12, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24256; Directorate Identifier 2006–NM–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that the electrical bonds of in-tank fuel system components were degrading on McDonnell Douglas DC–9 and MD–80 airplanes. Investigation revealed that the aluminum foil strip on the nylon base of the ground clamps can fracture or separate from the base. These grounded clamp bases are used to bond the fuel pipe to the airplane structure in the wing leading edge, main fuel tanks, center fuel tank, and aft fuselage on Model 717–200 airplanes. Bonding of the fuel pipes to the airplane structure is critical to ensure that electrical energy from a lightning strike dissipates to the airplane structure. This condition, if not corrected, could result in a fuel tank explosion.

The grounded clamp bases on certain Model 717–200 airplanes are identical to those on the affected Model DC–9 and MD–80 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Related Rulemaking

Boeing has issued Service Bulletin DC9–28–211, dated February 23, 2005, to address replacing the clamp bases for the fuel vent pipe with improved clamp bases on all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; we are planning to address the unsafe condition of that service bulletin with a separate rulemaking action.

Relevant Service Information

We have reviewed Boeing Service Bulletin 717–28–0004, Revision 2, dated March 11, 2005. The service bulletin describes procedures for replacing the grounded clamp bases for the fuel pipes located in the wing leading edge, main fuel tanks, center fuel tank, and aft fuselage with improved clamp bases; and checking the electrical bond of the modified self-bonding mounting

clamps. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The service bulletin refers to Chapter 28–00–00 of Boeing 717 Aircraft Maintenance Manual and Chapter 20–50–01, Class ''L,'' of the Boeing 717 Standard Wiring Practices Manual as additional sources of service information for checking the electrical bond of the modified self-bonding clamps.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between the NPRM and Service Bulletin

The service bulletin describes procedures for replacing 43 grounded clamp bases with improved clamp bases, as identified in Tables 1 and 2 of the Accomplishment Instructions. This NPRM, however, proposes to require replacing only the lightning critical clamp bases identified in Table 1. We have determined that replacement of the lightning critical clamp bases adequately addresses the unsafe condition identified in this NPRM.

The service bulletin specifies checking the electrical bond of the modified self-bonding mounting clamps, but does not specify what corrective action to take if an electrical bond fails that check. This NPRM proposes to require, before further flight, repairing any electrical bond of the mounting clamp according to a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Chapter 28–00–00 of Boeing 717 Aircraft Maintenance Manual and Chapter 20–50–01 of the Boeing 717 Standard Wiring Practices Manual are one approved method for repairing an electrical bond.

Although the service bulletin recommends accomplishing the replacements ''at a scheduled maintenance period when manpower, materials, and facilities are available,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 78 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the airplane manufacturer.

Costs of Compliance

There are about 120 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 92 airplanes of U.S. registry. The proposed actions would take about 16 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $239 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $139,748, or $1,519 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–24256; Directorate Identifier 2006–NM–010–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 12, 1006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Service Bulletin 717–28–0004, Revision 2, dated March 11, 2005.

Unsafe Condition

(d) This AD results from an investigation that revealed the aluminum foil strip on the nylon base of the ground clamps can fracture or separate from the base. We are issuing this AD to ensure that the fuel pipes are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, which could result in a fuel tank explosion.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Replace the Grounded Clamp Bases

(f) Within 78 months after the effective date of this AD, replace the lightning critical clamp bases of the fuel tank vent system with improved clamp bases, in accordance with Table 1 of Figure 1 of the Accomplishment Instructions of Boeing Service Bulletin 717–28–0004, Revision 2, dated March 11, 2005. Before further flight after the replacement, check the electrical bond of the modified self-bonding mounting clamps in accordance with the service bulletin. If any electrical bond fails the check, before further flight, repair the electrical bond of the mounting clamp according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 28–00–00 of the Boeing 717 Aircraft Maintenance Manual and Chapter 20–50–01 of the Boeing 717 Standard Wiring Practices Manual are one approved method.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on March 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4443 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24246; Directorate Identifier 2005–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes; and Model A340–541 and A340–642 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. This proposed AD would require an inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the flow metering system (FMS) and flow metering compact unit (FMCU) in the lower deck cargo compartment (LDCC) and bulk crew rest compartment (BCRC), as applicable; other specified actions; and corrective actions if necessary. This proposed AD results from a report that the FMS and FMCU of the fire extinguishing system may be blocked by anti-fretting material contamination. We are proposing this AD to prevent such anti-fretting material contamination, which could reduce the effectiveness of the fire extinguisher system to discharge fire extinguishing agents and to lower the concentration of Halon gas in the LDCC or BCRC in a timely manner. An ineffective fire extinguisher system in the event of a fire could result in an uncontrollable fire in the LDCC or BCRC.

DATES: We must receive comments on this proposed AD by April 27, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24246; Directorate Identifier 2005–NM–115–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. The DGAC advises that the flow metering system (FMS) and the flow metering compact unit (FMCU) (only on Model A340–200 and –300 series airplanes, and Model A340–541 and A340–642 airplanes) of the fire extinguishing system may be blocked by anti-fretting material contamination. The origin of this anti-fretting material contamination inside the piping, filters, and pressure reducers may come from manufacturing of the parts, as well as installation on airplanes during production or maintenance. After the first activation of the fire extinguishing system, the DGAC advises to assume that the FMS or FMCU is contaminated, and that the fire

extinguishing system may not be fully operable for its next use.

Anti-fretting material contamination, if not corrected, could reduce the effectiveness of the fire extinguisher system to discharge fire extinguishing agents and to lower the concentration of Halon gas in the lower deck cargo compartment (LDCC) or bulk crew rest compartment (BCRC) in a timely manner. An ineffective fire extinguisher system in the event of a fire could result in an uncontrollable fire in the LDCC or BCRC.

Relevant Service Information

Airbus has issued the following service bulletins:

SERVICE BULLETINS

For model—	Airbus service bulletin—
A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes.	A330–26–3031, Revision 02, dated February 1, 2005.
A340–211, –212, –213, –311, –312, and –313 airplanes	A340–26–4031, Revision 02, dated February 1, 2005.
A340–541 airplanes	A340–26–5007, dated January 31, 2005.

The service bulletins describe procedures for doing a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the LDCC; doing applicable corrective actions if necessary; and doing related investigative and other specified actions. The applicable corrective actions include cleaning any contaminated pressure reducer, pressure switch, plumbing part, and Halon filter; and replacing any of those parts with a new part if contamination cannot be removed. The related investigative and other specified actions include inspecting the fire extinguishing bottle to determine if it has been activated, cleaning Halon filters and plumbing parts, and applying anti-fretting material.

Airbus also has issued Service Bulletin A340–26–5008, dated January 31, 2005 (for Model A340–642 airplanes). The service bulletin describes procedures for doing a one-time general visual inspection for anti-fretting material contamination of the plumbing parts of the FMCU in the LDCC; doing applicable corrective actions if necessary; and doing other specified actions. The applicable corrective actions include replacing any plumbing part with a new part if contamination cannot be removed. The other specified actions include replacing the FMCU with new FMCUs, cleaning plumbing parts, and applying anti-fretting material.

In addition, Airbus has issued the following service bulletins:

SERVICE BULLETINS

For model—	Airbus service bulletin—
A340–311, –312, and –313 airplanes	A340–26–4035, dated February 22, 2005.
A340–541 and –642 airplanes	A340–26–5009, dated January 31, 2005.

The service bulletins describe procedures for doing a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the BCRC; doing applicable corrective actions if necessary; and doing related investigative and other specified actions. The applicable corrective actions include cleaning any contaminated pressure reducer, pressure switch, plumbing part, and Halon filter; and replacing any of those parts with a new part if contamination cannot be removed. The related investigative and other specified actions include inspecting the fire extinguishing bottle to determine if it has been activated, cleaning Halon filters and plumbing parts, and applying anti-fretting material.

Further, after October 1, 2004, Airbus revised the following Airbus aircraft maintenance manuals (AMMs):

AMMS

For model—	Page block—	Of—
A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes.	201	Chapter 26–23–00 of A330 AMM (LDCC–FMS).
A340–311, –312, and –313 airplanes	201	Chapter 26–28–00 of A340 AMM (BCRC–FMS).
A340–541 and –642 airplanes	201	Chapter 26–28–00 of A340–500/–600 AMM (BCRC–FMS).
A340–642 airplanes	201	Chapter 26–23–00 of A340–600 AMM (LDCC–FMU).
A340–211, –212, and –213 airplanes, and A340–311, –312, and –313 airplanes.	201	Chapter 26–23–00 of A340 AMM (LDCC–FMS).
A340–541 and –642 airplanes	201	Chapter 26–23–00 of A340–500/–600 AMM (LDCC–FMS).

The revised AMMs describe procedures for restoring the fire extinguishing system in the LDCC and in the BCRC, as applicable, after any activation, and include a caution note in the work instructions about how to apply anti-fretting material during the restoration, which, when followed, prevents a malfunction of the system.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The DGAC mandated the service information and issued French airworthiness directives F–2005–019 R1 (for Model A330–200 and A330–300 series airplanes), and F–2005–020 R1 (for Model A340–200 and A340–300 series airplanes, and Model A340–541

and A340–642 airplanes); both dated May 11, 2005; to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

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

Clarification Between the Proposed AD and French Airworthiness Directives

The French airworthiness directives specify the following compliance times for inspecting the FMCU and FMS in the LDCC:

COMPLIANCE TIMES IN FRENCH AIRWORTHINESS DIRECTIVES

For airplanes—	Compliance time
On which the fire extinguishing system is confirmed to have never been activated.	Within 6,600 flight hours after the effective date of the AD.
On which the fire extinguishing system has been activated at least once or it is uncertain whether it has ever been activated or not.	Within 2,400 flight hours after the effective date of the AD.

Like the French airworthiness directive, the proposed AD would require all affected airplanes to do the proposed actions within 2,400 flight hours after the effective date of the AD or within 6,600 flight hours after the effective date of the AD if an operator can conclusively determine that the fire extinguishing system has never been activated. However, the French airworthiness directive does not specify the means of making that determination. We have determined that reviewing an airplane log book is not a reliable way to determine if a fire extinguishing bottle has been activated, and that the only means of making this determination is by reviewing the airplane maintenance records. Therefore, this proposed AD would allow the proposed inspections to be done within 6,600 flight hours after the effective date of this AD, provided that reviewing the airplane maintenance records can conclusively determine that the fire extinguishing system has never been activated before the effective date of this AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection and restoration	Between 7 and 9 depending on airplane configuration.	$65	None	Between $455 and $585 depending on airplane configuration.	25	$11,375 and $14,625 depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–24246; Directorate Identifier 2005–NM–115–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes in table 1 of this AD; certificated in any category.

TABLE 1.—AFFECTED AIRPLANES

All airbus model—
(1) A330–201, –202, –203, –223, and –243 airplanes.
(2) A330–301, –321, –322, –323, –341, –342, and –343 airplanes.
(3) A340–211, –212, and –213 airplanes.
(4) A340–311, –312, and –313 airplanes.
(5) A340–541 airplanes.
(6) A340–642 airplanes.

Unsafe Condition

(d) This AD results from a report that the flow metering system (FMS) and the flow metering compact unit (FMCU) of the fire extinguishing system may be blocked by anti-fretting material contamination. We are issuing this AD to prevent such anti-fretting material contamination, which could reduce the effectiveness of the fire extinguisher system to discharge fire extinguishing agents and to lower the concentration of Halon gas in the lower deck cargo compartment (LDCC) and bulk crew rest compartment (BCRC) in a timely manner. An ineffective fire extinguisher system in the event of a fire could result in an uncontrollable fire in the LDCC or BCRC.

Compliance

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

Restoration

(f) After the effective date of this AD, after any activation of the fire extinguishing system, before further flight, restore the fire extinguishing system in the LDCC and in the BCRC, as applicable, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent). The applicable airplane maintenance manual (AMM) in table 2 of this AD is one approved method, provided that the following caution note is included in the work instructions of that AMM:

''CAUTION: APPLY A SMALL QUANTITY OF THE CORRECT GREASE TO THE MALE THREADS OF THE CONNECTIONS. THIS WILL PREVENT DAMAGE TO THE THREADS. MAKE SURE THAT THE GREASE DOES NOT GO INTO THE PIPES. GREASE IN THE PIPES CAN CAUSE A MALFUNCTION OF THE SYSTEM.''

TABLE 2.—AMMS

For model—	Page block—	Of—
(1) A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes.	201	Chapter 26–23–00 of A330 AMM (LDCC–FMS).
(2) A340–311, –312, and –313 airplanes	201	Chapter 26–28–00 of A340 AMM (BCRC–FMS).
(3) A340–541 and –642 airplanes	201	Chapter 26–28–00 of A340–500/–600 AMM (BCRC–FMS).
(4) A340–642 airplanes	201	Chapter 26–23–00 of A340–600 AMM (LDCC–FMCU).
(5) A340–211, –212, and –213 airplanes, and A340–311, –312, and –313 airplanes.	201	Chapter 26–23–00 of A340 AMM (LDCC–FMS).
(6) A340–541 and –642 airplanes	201	Chapter 26–23–00 of A340–500/–600 AMM (LDCC–FMS).

Inspections of FMS in the LDCC

(g) For airplanes identified in paragraphs (c)(1) through (c)(5) of this AD inclusive, on which the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the LDCC, do applicable corrective actions if necessary; and related investigative and other specified actions; in accordance with the Accomplishment Instructions of the applicable service bulletin in table 3 of this AD. The applicable corrective and related investigative and other specified actions must be done before further flight.

TABLE 3.—SERVICE BULLETINS FOR INSPECTING FMS IN THE LDCC

For model—	Airbus service bulletin—
(1) A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes.	A330–26–3031, Revision 02, dated February 1, 2005.
(2) A340–211, –212, –213, –311, –312, and –313 airplanes	A340–26–4031, Revision 02, dated February 1, 2005.
(3) A340–541 airplanes	A340–26–5007, dated January 31, 2005.

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

Inspection of FMCU in LDCC

(h) For airplanes identified in paragraph (c)(6) of this AD, on which the date of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the plumbing parts of the FMCU in the LDCC, and do applicable corrective and other specified actions. The actions must be done in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–26–5008, dated

January 31, 2005. The applicable corrective and other specified actions must be done before further flight.

Inspection of the FMS in the BCRC

(i) For airplanes identified in Table 4 of this AD, on which the date of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is before October 2, 2004: Except as provided by paragraph (j) of this AD, within 2,400 flight hours after the effective date of this AD, do a one-time general visual inspection for anti-fretting material contamination of the Halon filters and plumbing parts of the FMS in the BCRC, do applicable corrective if necessary; and related investigative and other specified actions. The actions must be done in accordance with the applicable service bulletin in table 4 of this AD. The applicable corrective and related investigative and other specified actions must be done before further flight.

TABLE 4.—SERVICE BULLETINS FOR INSPECTING FMS IN THE BCRC

For airplanes identified in—	On which—	Do the actions in accordance with the accomplishment instructions of—
(1) Paragraphs (c)(5) and (c)(6) of this AD.	The BCRC was incorporated in production in accordance with any Airbus modification 47198, 47884, 48895, 48710, 49316, 50107, 50900, or 51320.	Airbus Service Bulletin A340–26–5009, dated January 31, 2005.
(2) Paragraph (c)(4) of this AD	The BCRC was incorporated in production in accordance with Airbus modification 50901.	Airbus Service Bulletin A340–26–4035, dated February 22, 2005.

Compliance Time

(j) The inspection required by paragraphs (g), (h), and (i) of this AD may be done within 6,600 flight hours after the effective date of this AD, provided that you can conclusively determine from reviewing the airplane maintenance records that the fire extinguishing system has never been activated before the effective date of this AD. A log book entry is not acceptable for determining if a fire extinguishing bottle has been activated.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) French airworthiness directives F–2005–019 R1 (for Model A330–200 and A330–300 series airplanes), and F–2005–020 R1 (for Model A340–200 and A340–300 series airplanes, and Model A340–541 and A340–642 airplanes), both issued May 11, 2005, also address the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4442 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 7

RIN 1219–AB43

Equivalency Evaluation of the U.S. Environmental Protection Agency's Nonroad Diesel Engine Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of intent.

SUMMARY: We intend to review the U.S. Environmental Protection Agency's (EPA) standards for nonroad diesel engines to determine if certain EPA requirements in 40 CFR part 89, Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines, provide, or can be modified to provide, at least the same degree of protection as our existing applicable requirements in 30 CFR part 7, subpart E—Diesel Engines Intended for Use in Underground Coal Mines. This review is limited to the testing of Category B diesel engines as defined in 30 CFR 7.82, Definitions.

DATES: Comments must be received by May 30, 2006.

ADDRESSES: Comments must be clearly identified as such and transmitted electronically to *equivalencycomment@dol.gov*. Alternatively, comments can be submitted by using the Federal eRulemaking portal *http://www.regulations.gov* and following the instructions. Persons unable to file comments electronically should submit their comments to us by regular mail or hand delivery to MSHA, Approval and Certification Center, Attention: John P. Faini, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059 or transmit by facsimile to (304) 547–2071. Please specify RIN 1219–AB43 on documents sent in response to this notice. You may contact us with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.asp*.

FOR FURTHER INFORMATION CONTACT: John P. Faini, Mechanical and Engineering Safety Division, Approval and Certification Center, MSHA; phone: (304) 547–2042; facsimile: (304) 547–2084; E-mail: *faini.john@dol.gov*. We maintain a listserve on our Web site that enables subscribers to receive e-mail notification when we publish rulemaking documents in the **Federal Register**. To subscribe to the listserve, visit our site at *http://www.msha.gov/subscriptions/subscribe.aspx*.

SUPPLEMENTARY INFORMATION:

Background

On June 17, 2003 we published a final rule, Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards (68 FR 36417). The final rule allows manufacturers to test their products in accordance with non-MSHA standards if we determine that the non-MSHA standard is equivalent to our applicable product approval requirements or can be modified to provide at least the same level of protection.

Part 7 of 30 CFR specifies requirements for our approval of applicant or third party testing and evaluation of equipment and materials for use in underground mines that do not involve subjective testing. Paragraph 7.10(b) requires us to publish our intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. In addition, paragraph 7.10(c) requires us to list our equivalency determinations in 30 CFR part 7.

EPA is a Federal agency that regulates both the gaseous and diesel particulate matter emissions from nonroad diesel engines sold in the United States. The EPA standards in 40 CFR part 89, Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines, establish laboratory testing procedures and application requirements for nonroad engines. Diesel engine manufacturers are redesigning their engines to meet new EPA emission standards. Manufacturers must apply for our approval for each new engine design if they are to be used in underground coal mines. Manufacturers would benefit if they were able to streamline engine testing so they could solicit approval from us as well as EPA using the same set of results.

We are asking for public input concerning our intent to review certain EPA Nonroad Diesel Engine standards published under part 89, Title 40, CFR to determine whether these standards provide, or could be modified to provide, at least the same degree of protection as our existing applicable requirements. We intend to limit our review to the following EPA standards:

- 89.2, Definitions,
- 89.6, Reference materials,
- 89.115, Application for certificate,
- 89.119, Emission tests,
- Subpart D, Emission Test Equipment Provisions,
- Appendix A, to Subpart D,
- Appendix B, to Subpart D, and
- Subpart E, Exhaust Emission Test Procedures.

We intend to review these specific EPA standards to determine whether the EPA requirements provide adequate testing procedures and technical information needed for the issuance of our approval under part 7, subpart E. The requirements in our part 7 apply to certain equipment and materials whose product testing and evaluation does not involve subjective analysis. We have reviewed the applicable EPA requirements and have determined that they do not involve subjective analysis.

If we determine the specified sections of 40 CFR part 89 would provide at least the same degree of protection in their original form or could be modified to demonstrate equivalency to 30 CFR part 7, subpart E, Category B diesel engines, then we would amend 30 CFR part 7 accordingly. If modifications are required, they would also be specified in our part 7.

We welcome comments on whether the EPA requirements provide testing procedures and technical information equivalent to the approval requirements set out in part 7 subpart E. If you feel the specified sections of 40 CFR part 89 do not provide the same degree of protection in their original form, but could be modified to do so, specify what modifications are necessary to demonstrate equivalency. After the comment period closes, we will perform an evaluation of the EPA standards. At the conclusion of the evaluation, we will publish our determination in the **Federal Register** accompanied by a summary of the findings and a list of required modifications, if necessary.

Dated: March 20, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. E6–4362 Filed 3–27–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 18 and 75

RIN 1219–AB34

High-Voltage Continuous Mining Machine Standard for Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: We (the Mine Safety and Health Administration (MSHA)) are reproposing provisions involving two issues included in the notice of proposed rulemaking that was published in the **Federal Register** on July 16, 2004. These issues involve the following: Types of trailing cables that can be used with high-voltage continuous mining machines; and a requirement to use high-voltage insulating gloves or insulated cable handling tools when handling energized high-voltage trailing cables. In connection with the second issue, we are also addressing the availability requirement for high-voltage insulating gloves and insulated cable handling tools, and the safety requirements for these tools. We are reproposing these provisions after consideration of the oral and written pre- and post-hearing comments that we received.

DATES: Comments must be received by May 30, 2006.

ADDRESSES: Comments must be clearly identified as such and transmitted electronically to *http://www.regulations.gov* or to *zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB34'' in the subject line of the message. Persons unable to file comments electronically should submit their comments to us by regular mail or hand delivery to MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, or by facsimile at 202–693–9441. You may contact us with any format questions.

Instructions: All comments, including any personal information contained therein, will be posted without change at *http://www.msha.gov/currentcomments.asp.*

Docket: The entire rulemaking record may be viewed in MSHA's public reading room at 1100 Wilson Boulevard, Room 2349, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information contact Robert Stone, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Arlington, Virginia 22209–3939. Mr. Stone can be reached at (202) 693–9440.

We maintain a listserve on our Web site that enables subscribers to receive e-mail notification when we publish rulemaking documents in the **Federal Register**. To subscribe to the listserve, visit our site at *http://www.msha.gov/subscriptions/subscribe.aspx.*

You may obtain copies of this proposed rule in an alternative format by accessing the Internet at *http://www.msha.gov/REGSINFO.HTM.* The document is also available by calling 202–693–9440.

I. Rulemaking Background

On July 16, 2004, we published a proposed rule in the **Federal Register** (69 FR 42812) to establish design requirements for approval of high-voltage continuous mining machines operating in face areas of coal underground mines. The rule also proposed to establish new mandatory electrical safety standards for the installation, use, and maintenance of high-voltage continuous mining machines used in underground coal mines. The proposed rule would enable mines to safely utilize high-voltage continuous mining machines with enhanced safety protection from fire, explosion, and shock hazards without the need for mine operators to file petitions for modification (PFM) to use them.

In the July 16, 2004 **Federal Register** notice we also announced that four public hearings would be held in September 2004. The post-hearing comment period was scheduled to close on October 14, 2004. However, on August 23, 2004, we published a notice changing the public hearing dates to November 2004, and the close of the post-hearing comment period to

December 10, 2004 (69 FR 51787). Hearings were held accordingly. We then reviewed all oral and written comments received.

Based on that review, we have decided to repropose provisions that relate to the types of trailing cables that can be used with high-voltage continuous mining machines and the types of cable handling equipment that must be used when handling energized high-voltage trailing cables. We are requesting comments on these provisions. All submissions to us concerning these provisions will be placed in the record and made available for public review. Any submissions concerning other provisions of the July 16, 2004 proposed rule submitted at this time are beyond the scope of this regulatory action and will not be considered.

II. Section-by-Section Discussion

The following section-by-section analysis explains how the provisions proposed today compare with the associated provisions as proposed on July 16, 2004. We also discuss the public comments received on the associated July 16, 2004 provisions.

Section-by-Section Analysis

Section 18.54(f)(4) High-Voltage Trailing Cable(s) Jackets

The July 16, 2004 proposed rule incorporated by reference the current carrying capacity (ampacity) ratings and outside diameter requirements for trailing cables listed in the Insulated Cable Engineers Association Standards (ICEA) S–75–381/National Electrical Manufacturer's Association (NEMA) Standard NEMA WC 58–1997. However, the proposed rule failed to include an incorporation by reference of the physical properties for the double-jacketed cable listed in the ICEA S–75–381/NEMA WC 58–1997 standard. We are correcting this oversight by proposing to incorporate by reference the physical properties of the double-jacketed trailing cable specified in the ICEA/NEMA document referenced above. The proposed incorporation does not include additional requirements and is being proposed only to clarify that double-jacketed trailing cables will be required to meet the ampacity ratings, the outside diameter requirements, as well as the physical properties listed in ICEA S–75–381/NEMA WC 58–1997, as do all the double-jacketed trailing cables accepted in granted PFMs.

Accordingly, proposed paragraph (f) notes that the incorporation of the ICEA S–75–381/NEMA WC 58–1997 standard was approved by the Director of the Federal Register, and includes details regarding where the public may inspect or purchase a copy of such standard.

Single-jacketed trailing cables will need to meet the ampacity ratings and outside diameter requirements listed in the referenced ICEA/NEMA standard. Proposed paragraph (f)(4)(ii) includes the physical properties (minimum tear and tensile) requirements as discussed below.

Proposed § 18.54(f)(4) addresses the design and construction of high-voltage trailing cable jackets. As originally proposed on July 16, 2004, paragraph (f)(4) would have required trailing cables to have two reinforced layers of jacket material. With this type of construction, the inner-most layer of the two-layered protective cable jacket would have been required to be a color distinctive from the outer jacket color so that the damaged jacket would be easily identifiable, and the color black was not permitted to be used for either layer.

We received several comments on § 18.54(f)(4) as it was proposed in July 2004. Some commenters were in favor of using single-jacketed cables made of thermoplastic polyurethane (TPU). A commenter stated that the TPU jacket is stronger than a two-layer jacket and it should be allowed as an option to the two-layered jacket. This commenter further stated that the TPU jacket material has a very high tensile strength and is extremely resistant to abrasion and tear. This commenter reported that the minimum tensile strength and tear strength of extra heavy duty rubber jackets were 2400 pounds per square inch and 40 pounds per inch, while the values for the TPU jackets were 5000 pounds per square inch and 120 pounds per inch, respectively. The commenter indicated that the TPU material can be made in a color other than black, and is so rugged that it can only be successfully manufactured in a single layer. This commenter stated that TPU-jacketed trailing cables have been in use in the mining industry for 11 or 12 years and have also been used successfully as shearer power cables and trailing cables on some medium-voltage continuous mining machines and other pieces of mining equipment.

Another commenter stated that at least one PFM permitted the use of a TPU jacket as an alternative to the double-jacket requirement. This commenter further noted that this type of single-jacketed cable had been used at a mine on two high-voltage continuous mining machines and on shuttle cars for over two years, both successfully. Another commenter suggested that § 18.54(f)(4) (as proposed in July 2004) use the same PFM language to allow both the single-jacketed and double-jacketed trailing cables. However, this commenter later stated that a single-jacketed trailing cable should not be included in the regulation, and offered no explanation for the basis of his comment.

Based on the information provided by commenters, we are proposing to revise § 18.54(f)(4) of the July 16, 2004 proposed rule to permit the use of a single-jacketed cable. Proposed § 18.54(f)(4)(ii) would require that a single-jacketed cable have a tear strength of more than 100 pounds per inch thickness and a tensile strength exceeding 4000 pounds per square inch. Proposed § 18.54(f)(4)(i) would require a double-jacketed trailing cable to have two reinforced layers of jacket material. ICEA Publication S–75–381 specifies requirements for double-jacketed cables. The publication lists a number of physical properties (including tear and tensile strengths) for four different jacket materials. ICEA also cites minimum values for tear and tensile strengths. The ICEA requirements have applied to all of our PFMs. However, since the TPU jacket material is not covered by this ICEA standard, we are proposing to set requirements for the TPU jacket as discussed above. Proposed paragraph (f)(4) results from wording we used in granted PFMs which permit the use of double-jacketed trailing cables and a granted PFM that permits the option of using a single-jacketed trailing cable for high-voltage continuous mining machines. The granted PFM for the single-jacketed trailing cable specified that the jacket must have a tear-strength of more than 100 pounds per inch thickness and a tensile strength exceeding 4000 pounds per square inch.

Our experience with the granted PFM permitting the use of a single-jacketed cable, suggests that the proposed tear and tensile strength values specified above will protect the cable from damage, thereby protecting miners from shock hazards. A single-jacketed cable that meets the proposed tear and tensile strength values would be in compliance with the proposed provision. The single jacketed cable would be permitted to be used for a trailing cable on high-voltage continuous mining machines provided it also meets the other applicable provisions of this part.

We are also proposing to remove the extraneous language in § 18.54(f)(4)(i) which states, ''to allow easy recognition of damaged jacket areas.'' This language, although helpful in understanding why we are requiring that the innermost layer of the double-jacketed cable be a different color than the outermost layer,

is not needed as rule text. This section was also rewritten for clarity. These proposed rule changes would not reduce the protection afforded by existing 30 CFR part 18 standards.

We are requesting comments on proposed § 18.54(f)(4), including the minimum tear and tensile strength values for single-jacketed cables.

Section 75.828 Trailing Cable Handling and Pulling

(a) Handling

Section 75.828(a), as proposed on July 16, 2004, addressed the types of personal protective equipment (PPE) required to be used when it is necessary to handle energized cables. Section 75.828(a) would have prohibited handling energized high-voltage trailing cables without wearing properly tested and rated insulating gloves. The provision would have required that testing and rating of the insulating gloves be in accordance with § 75.833 as proposed on July 16, 2004. Furthermore, § 75.828(a) would have required the use of high-voltage insulating gloves even if mitts, hooks, tongs, slings, aprons, or other PPE was used. Many comments were received on § 75.828(a) as proposed on July 16, 2004. Several commenters stated that the high-voltage trailing cable would be the safest cable in the mine because of the proposed cable design and sensitive ground-fault protection required. These commenters indicated that the energized cable could be safely handled without the use of high-voltage gloves. A commenter submitted a safety analysis concluding that, ''handling cable used on a 2400–V continuous miner in the same fashion as on low- and medium-voltage continuous miners would not present an increased shock hazard.'' Another commenter referred to the above analysis and stated, ''This cable is as safe or safer than low- and medium-voltage cables and should not be treated differently than any other trailing cable on the section.''

Some commenters supported the use of gloves as providing the safest method for handling energized trailing cables. A few commenters suggested the use of additional protection such as chest protectors and face shields. Other commenters suggested the use of a cable handling system as an alternative to insulating gloves.

Some commenters discussed how cumbersome it is to use high-voltage insulating gloves for handling high-voltage cables. These commenters stated that the gloves are so uncomfortable that many miners would have them at hand but probably would not use them. A few commenters suggested that the hygiene concerns of some miners would require mine operators to purchase many sets of gloves and leather protectors. These commenters suggested the use of slings, tongs, hooks, etc., as an alternative to high-voltage insulating gloves.

We agree that it is appropriate to provide an alternative to requiring high-voltage insulating gloves to handle energized cables, and believe that insulated cable handling tools would provide such a suitable option. Examples of insulated cable handling tools are hooks, slings, and tongs when designed and manufactured for cable handling. Consequently, we would not consider aprons, face shields, and chest protectors to be insulated cable handling tools because they are not designed and manufactured for cable handling. However, this proposed rule would not prohibit the use of these other personal protective equipment when they are used in conjunction with insulating gloves or insulated cable handling tools.

Also, in the July 16, 2004 proposed rule, we had implied in error that mitts (or mittens) are different than gloves and the proposed rule would have required that they be used in conjunction with gloves. Since high-voltage insulating gloves may be finger gloves or mittens, this proposed rule does not make a distinction between them. Therefore, any reference in this proposed rule to insulating gloves would also include mittens.

Based on the above comments, we are now proposing to revise § 75.828(a) of the July 16, 2004 proposed rule to allow the option of either using high-voltage insulating gloves, which includes both the rubber gloves and the leather outer protector gloves, or insulated cable handling tools when handling energized high-voltage trailing cables. We are proposing to add the words ''including both the rubber gloves and the leather outer protector gloves'' to clarify that both gloves must be worn to satisfy the glove requirement. In addition, we are proposing to redesignate revised § 75.828(a) as § 75.833(a) to consolidate all the cable handling requirements under one standard. Consequently, we are proposing to revise the section heading of § 75.828 to read, ''Trailing cable pulling,'' and the provision would be renumbered and redesignated as proposed § 75.833, as discussed below. This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards.

We are requesting comments on the revision of this provision to allow the option of using insulated cable handling tools. We also request comments on the revision and redesignation of this provision as proposed § 75.833(a).

Section 75.833 Handling High-Voltage Trailing Cables

Section 75.833, as proposed on July 16, 2004, addressed the ratings, tests required, and frequency of examination and testing of high-voltage insulating gloves. Section 75.833(a) would have required mine operators to provide high-voltage insulating gloves to miners for handling energized high-voltage trailing cables. Section 75.833(b) would have required high-voltage insulating gloves to have a Class 1 (7,500 maximum use volts) or higher voltage rating in accordance with ASTM F496–02a. Section 75.833(c) would have required the rubber portion of the insulating gloves to be air-tested at the beginning of each shift. Section 75.833(d) would have required the leather and rubber insulating gloves to be visually examined before each use for signs of damage. Section 75.833(e) would have required the damaged rubber gloves to be removed from underground or destroyed. Section 75.833(f) would have required that rubber insulating gloves be electrically tested every 30 days in accordance with ASTM F496–02a.

Based on the comments received on § 75.828(a) of the July 16, 2004 proposed rule, and as discussed above, we are proposing to add revised § 75.828(a) to proposed § 75.833, changing the section heading for § 75.833, and redesignating it as proposed § 75.833(a). This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards. We request comments on proposed § 75.833(a). We are also reproposing § 75.833(a) of the July 16, 2004 proposed rule to require that mine operators provide high-voltage insulating gloves or insulated cable handling tools to miners who handle energized high-voltage trailing cables. This provision would be redesignated as paragraph (b) of proposed § 75.833. We request comments on proposed § 75.833(b), formerly § 75.833(a).

Additionally, we are reproposing §§ 75.833(b) and 75.833(f) of the July 16, 2004 proposed rule to consolidate in one paragraph the voltage rating and testing requirements for the rubber portion of the high-voltage insulating gloves. This consolidation does not include additional requirements, but simplifies the document because it would contain a single incorporation by reference of the ASTM F496–02a ''Standard Specification for In-Service Care of Insulating Gloves and Sleeves (2002).'' The new paragraph would be codified as proposed § 75.833(c)(1). We

request comments on proposed § 75.833(c)(1), formerly §§ 75.833(b) and 75.833(f).

Finally, we are proposing to add a new paragraph to § 75.833 of the July 16, 2004 proposed rule to specify requirements for insulated cable handling tools. This new paragraph would be codified as proposed § 75.833(d).

Proposed § 75.833(d)(1) would require that insulated cable handling tools be rated and maintained to withstand at least 7,500 volts. We are proposing to require 7,500 volts rating to ensure that the insulated cable handling tools provide at least the same level of protection to miners as the insulating high-voltage gloves.

Proposed § 75.833(d)(2) would require that an insulated cable handling tool be designed and manufactured for cable handling in order to protect miners against shock hazards. This proposed requirement is also intended to ensure that miners use cable handling tools that are an effective substitute for high-voltage insulating gloves. As discussed under § 75.828(a), examples of insulated cable handling tools are hooks, slings, and tongs, when designed and manufactured for cable handling. While face shields and chest protectors protect miners against shock hazards, we do not consider them to be insulated cable handling tools because they are not designed and manufactured for cable handling. However, under the proposed rule such personal protective equipment may be used in conjunction with high-voltage insulating gloves or insulated cable handling tools.

Proposed § 75.833(d)(3) would require that the insulated cable handling tools be visually examined before each use for signs of damage or defects. This proposed requirement would help identify damaged or defective insulated cable handling tools before they present a hazard to miners.

Proposed § 75.833(d)(4) would require that damaged or defective insulated cable handling tools be removed from the underground area of the mine or destroyed. This proposed requirement is intended to ensure that the insulated cable handling tools available to miners who handle energized high-voltage cables are safe to use.

This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards. We specifically request comments on all of the proposed provisions of § 75.833(d).

Sections 75.833(c), (d), and (e) of the July 16, 2004 proposed rule are not being reproposed. These sections have been redesignated as §§ 75.833(c)(2), (c)(3), and (c)(4), and any comments received on these sections would be beyond the scope of the rulemaking and would not be considered. For the reader's convenience, we are publishing, in this notice, proposed § 75.833 in its entirety, including those sections that are not being reproposed.

III. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of proposed regulations. We have fulfilled this requirement for the proposed rule, and have determined that it would not have an annual effect of $100 million or more on the economy. Therefore, the proposed rule is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

Mining Sectors Affected

As of the end of 2003, this proposed rule would apply to 640 underground coal mines in the United States (and the approximately 36,100 underground coal miners employed in those mines).

Benefits

The proposed rule would reduce the potential for electrical-related fatalities and injuries. This risk reduction is derived from proposed §§ 18.54(f)(4) and 75.833. Proposed § 75.833 would require miners to use either high-voltage insulating gloves or insulated cable handling tools while handling energized high-voltage trailing cable. The proposed rule would ensure the safety of miners from electrical shock by requiring the insulated cable handling tools to be designed and maintained to withstand a voltage of at least 7,500 volts. This is the same voltage requirement as Class 1 high-voltage insulating gloves required in the proposed rule of July 16, 2004.

Proposed § 18.54(f)(4) retains the July 16, 2004 requirement in proposed § 18.54(f)(4) for the use of double-jacketed high-voltage trailing cables used on high-voltage continuous mining machines, and adds technical specifications for the use of single-jacketed high-voltage trailing cables on such machines. We propose that single-jacketed high voltage trailing cables would have a tear strength of more than 100 pounds per inch and a tensile strength of more than 4000 pounds per square inch. These values exceed the minimum cable industry standard values cited for typical extra-heavy-duty double-jacketed cables. The single-jacketed cables that would be permitted under proposed § 18.54(f)(4) would produce trailing cables that are much more durable than the double-jacketed trailing cables currently used on the majority of high-voltage continuous mining machines in underground coal mines. Our experience with single-jacketed cables has shown that the strength and durability of the single jacketed cables reduce the potential for cable damage. Damaged trailing cables must be immediately repaired in order to be safe to use or removed from service. Cable repairs take time away from production, and damaged cables can pose serious fire and shock hazards to miners if not repaired in a timely manner. A durable trailing cable that is less prone to physical damage would benefit the industry and improve miner safety.

Compliance Cost Savings

Proposed § 75.833 would result in annual net cost savings of $33,920 to underground coal mine operators. The derivation of the annual cost savings is described below.

Proposed § 75.833(a) would require miners to use insulating gloves or insulated cable handling tools while handling energized high-voltage trailing cables. Proposed paragraph (a) would not require that insulated cable handling tools be used in conjunction with high-voltage insulating gloves. Proposed § 75.833(b) would require that each mine operator make available to miners handling energized high-voltage trailing cables, high-voltage insulating gloves or insulated cable handling tools. We do not expect that mine operators, under the proposed rule, would stop purchasing gloves altogether, but rather that they would decrease the quantity of gloves they now purchase and increase their use of insulated cable handling tools. When rubber gloves are used, proposed § 75.833(c) would require that they be tested every 30 days.

The PREA that accompanied the proposed rule issued on July 16, 2004, noted that the proper type of gloves to handle high-voltage trailing cables includes a pair of rubber and a pair of leather gloves. The rubber gloves are put on first; then the leather gloves are put over the rubber gloves in order to provide protection. We estimated that, on average, a pair of rubber gloves would cost approximately $70 and would last for about six months. We also estimated that, on average, the cost of a pair of leather gloves was approximately $30 and the life of the gloves would be one month. Thus, one person would need two pairs of rubber gloves and 12 pairs of leather gloves per year, costing $500 [($70 × 2) + ($30 × 12)]. Based on a testing cost of $10 per

pair of rubber gloves, the annual cost to test a pair of gloves is estimated to be $120 ($10 × 12). Operators that use some type of insulated cable handling tool are assumed to use a hook that, on average, costs approximately $90 per hook.

Since the proposed rule issued on July 16, 2004 would have required mine operators to purchase gloves, we estimated in the PREA that accompanied the July 16, 2004 proposed rule that there would be five persons, each needing a pair of rubber and leather gloves, for every section where a high-voltage continuous mining machine operated. Since proposed § 75.833(b) would not require that mine operators purchase gloves, we estimate that for each section where a high-voltage continuous mining machine operates, the mine operator would decrease the purchase and testing of gloves from 5 to 3 pairs and would increase the use of insulated cable handling tools. In addition, for every section where a high-voltage continuous mining machine operates, we also estimate that the mine operator would purchase 2 hooks per year. Table IV–1 shows estimated annual net cost savings for mine operators under the requirements of proposed § 75.833.

TABLE IV–1.—§ 75.833 ANNUAL NET COST SAVINGS RELATED TO USE OF INSULATED CABLE HANDLING EQUIPMENT

Emp. size category	Number of sections per HVCM	Net cost savings per section [a]	Annual net cost savings
20 to 500	30	$1,060	$31,800
>500	2	1,060	2,120
Total	.....	.....	33,920

[a] Net Cost Savings of $1,060 per section = [(($500 annual gloves cost per person × 2 pairs) + ($120 to test rubber gloves/yr. × 2 pairs))—($90 cost per hook × 2 hooks per year)].

We have preliminarily determined that underground coal mine operators would not incur any costs to comply with proposed § 18.54(f)(4). Although the cost of the single-jacketed TPU cable is approximately 15 percent higher than the double-jacketed cable, there are no compliance costs associated with proposed § 18.54(f)(4) because mine operators would have the option of using either a double-jacketed trailing cable or a single-jacketed trailing cable. Thus, after the rule becomes effective, mine operators currently using a double-jacketed trailing cable can continue to do so, and those operators that intend to purchase high-voltage continuous mining machines in the future will have the choice of what type of high-voltage trailing cable they want to use.

Feasibility

We have concluded that the requirements of the proposed rule are both technologically and economically feasible.

This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. Insulated cable handling tools are available for purchase that could be used in place of high-voltage insulating gloves. Thus, we believe that this proposed rule is technologically feasible.

This rulemaking would provide an annual net cost savings of $33,920 to underground coal mine operators whose 2003 annual revenues are estimated at $9 billion. Therefore, this rulemaking is economically feasible.

IV. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), we have analyzed the impact of the proposed rule on small businesses. Further, we have made a determination with respect to whether or not we can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, we must include in the rule a factual basis for this certification. If the proposed rule would have a significant economic impact on a substantial number of small entities, we must develop a regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, we must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. We have not taken such an action and hence are required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. All mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

We have looked at the impacts of our rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which we and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with our rules and the impact of our rules on them will also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by our agency, are of special concern to us.

No underground coal mine operator having fewer than 20 employees has applied for a PFM to use a high-voltage continuous mining machine. In addition, in the future, we do not expect mine operators in this size class to use a high-voltage continuous mining machine. Therefore, we conclude that the proposed rule would have no economic impact on mine operators in this size class. We limit the remainder of the analysis to impacts on ''small entities'' with respect to SBA's definition of a small mine (those employing 500 or fewer workers). We conclude that we can certify that the proposed rule would not have a significant economic impact on a substantial number of these small entities that are covered by this rulemaking.

Factual Basis for Certification

Our analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the

estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs or savings are less than one percent of the estimated revenues, we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs or savings exceed one percent of revenues, it tends to indicate that further analysis may be warranted.

The 2003 production for underground coal mine operators that employ 500 or fewer employees was 299,300,775 tons. Using a 2003 price of underground coal of $26.71 per ton, the 2003 underground coal revenues for these mine operators is estimated to be approximately $8 billion.[1] Based on SBA's definition of a small mine the proposed rule cost savings of $33,920 are substantially less than 1 percent (less than 0.0001 percent) of estimated revenues of underground coal mine operators.

V. Paperwork Reduction Act of 1995

The reproposed provisions do not contain any information collection requirements.

VI. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, nor would it increase private sector expenditures by more than $100 million annually, nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This proposed rule would have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

[1] The 2003 underground coal price of $26.71 can be found in Table 28 of the Department of Energy/Energy Information Agency, Annual Coal Report 2003.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this proposed rule would meet the applicable standards provided in section 3 of Executive Order 12988, Civil Justice Reform.

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

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132: Federalism

This proposed rule would not have ''federalism implications'' because it would not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

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

This proposed rule would not have ''tribal implications'' because it would not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

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

We have reviewed this proposed rule for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining sector. Because this proposed rule would result in yearly net cost savings to the coal mining industry, this proposed rule would neither reduce the supply of coal nor increase its price. This proposed rule is not a ''significant energy action'' because it would not be ''likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

We have thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of this PREA, we have determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further agency action or analysis.

List of Subjects

30 CFR Part 18

Approval regulations, Electric motor-driven mine equipment and accessories, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Electric power, Fire prevention, High-voltage continuous mining machines, Incorporation by reference, Mandatory safety standards, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: March 20, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration proposes to further amend the proposed rule published at 69 FR 42812, July 16, 2004, as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

2. In proposed § 18.54, revise paragraphs (f) introductory text and (f)(4) to read as follows:

§ 18.54 High-voltage continuous mining machines.

* * * * *

(f) *High-Voltage Trailing Cable(s).* High-voltage trailing cable(s) must conform to the ampacity and outer dimensions in accordance with the Insulated Cable Engineers Association (ICEA) Standard ICEA S–75–381/ National Electrical Manufacturer's Association (NEMA) Standard NEMA WC 58–1997. The physical properties of the double-jacketed cable required in (f)(4)(i), must also be in accordance with ICEA S–75–381/NEMA WC 58–1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of these incorporated documents at any of the following locations: MSHA Coal Mine Safety and Health District Office, MSHA Approval and Certification Center, the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Arlington, VA; or at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may also purchase a copy from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112. In addition, the cable must be constructed with:

(4) Either a double-jacketed or single-jacketed cable as follows:

(i) *Double jacket.* A double-jacketed cable consisting of reinforced outer and inner protective layers. The inner layer must be a distinctive color from the outer layer. The color black must not be used for either protective layer.

(ii) *Single jacket.* A single layer jacketed cable with a tear strength of more than 100 pounds per inch thickness, and a tensile strength of more than 4000 pounds per square inch. The cable jacket must not be black in color.

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Revise proposed § 75.828 to read as follows:

§ 75.828 Trailing cable pulling.

The trailing cable must be de-energized prior to being pulled by any equipment other than the continuous mining machine. Cable manufacturers' recommended pulling procedures must be followed when pulling the trailing cable with such equipment.

3. Revise proposed § 75.833 to read as follows:

§ 75.833 Handling high-voltage trailing cables.

(a) *Cable Handling.* Miners must not handle energized trailing cables unless they are wearing high-voltage insulating gloves, which include the rubber gloves and leather outer protector gloves, or are using insulated cable handling tools that meet the requirements of paragraphs (c) or (d) of this section.

(b) *Availability.* Each mine operator must make high-voltage insulating gloves or insulated cable handling tools available to miners handling energized high-voltage trailing cables.

(c) *High-voltage insulating gloves.* High-voltage insulating gloves provided under paragraph (b) of this section must meet the following requirements:

(1) The rubber gloves must be designed and maintained to have a voltage rating of at least Class 1 (7,500 volts) and electrically tested every 30 days in accordance with publication ASTM F496–02a, ''Standard Specification for In-Service Care of Insulating Gloves and Sleeves'' (2002) which is incorporated by reference. You may inspect a copy at any MSHA Coal Mine Safety and Health District office, at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Arlington, VA, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. You may also purchase a copy from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The rubber glove portion must be air-tested at the beginning of each shift to ensure its effectiveness.

(3) Both the leather protector and rubber insulating gloves must be visually examined before each use for signs of damage or defects.

(4) Damaged rubber gloves must be removed from the underground area of the mine or destroyed. Leather protectors must be maintained in good condition or replaced.

(d) *Insulated cable handling tools.* Insulated cable handling tools provided under paragraph (b) of this section must be:

(1) Rated and properly maintained to withstand at least 7,500 volts;

(2) Designed and manufactured for cable handling;

(3) Visually examined before each use for signs of damage or defects; and

(4) Removed from the underground area of the mine or destroyed if damaged or defective.

[FR Doc. E6–4359 Filed 3–27–06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–06–009]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend and revise 33 CFR 165.1315 to establish additional safety zones on the waters of the Suislaw, Willamette, Columbia, Coos, and Chehalis Rivers, located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon, during annual fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before April 27, 2006.

ADDRESSES: You will mail comments and related material to Petty Officer Keuter at Sector Portland 6767 N. Basin Ave, Portland OR 97217. Sector Portland maintains the public docket for this rulemaking. Comments and material received from the public, as

well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–9301.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in the rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD13–06–009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Coast Guard is proposing to establish additional permanent safety zones to allow for safe annual fireworks displays. All events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

This proposed rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the fireworks event indicated in section 2 of this Notice of Proposed Rulemaking. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Captain of the Port, Portland, Oregon, will enforce these safety zones. The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

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

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

This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass small portions of the Columbia, Willamette, Coos, Chehalis and Siuslaw Rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

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

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Willamette, Columbia, Coos, Chehalis and Suislaw Rivers during the times mentioned in section 2(a)(8–14) at the conclusion of this proposed rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only sixty minutes during the evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact Petty Officer Keuter by phone at (503) 240–9301 or by e-mail at *Charity.S.Keuter@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes safety zones which have duration of no more than two hours each. Due to the temporary safety zones being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.1315 by adding paragraphs (a)(9) through (15) to read as follows:

§ 165.1315 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) * * *

(9) *Florence Chamber 4th of July Fireworks Display, Florence, OR:*

(i) *Location.* All water of the Siuslaw River enclosed by the following points: 43°58′ 05″ N, 124°05′54″ W following the shoreline to 43°58′20″ N, 124°04′46″ W then south to 43°58′07″ N, 124°, 04′40″ W following the shoreline to 43°57′48″ N, 124°05′54″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(10) *Oaks Park July 4th Celebration, Portland, OR:*

(i) *Location.* All water of the Willamette River enclosed by the following points: 45°28′26″ N, 122°39′43″ W following the shoreline to 45°28′10″ N, 122°39′54″ W then west to 45°28′41″ N, 122°40′06″ W following the shoreline to 45°28′31″ N, 122°40′01″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(11) *Rainier Days Fireworks Celebration, Rainier, OR:*

(i) *Location.* All water of the Columbia River enclosed by the following points: 46°06′04″ N, 122°56′35″ W following the shoreline to 46°05′53″ N, 122°55′58″ W then south to 46°05′24″ N, 122°55′58″ W following the shoreline to 46°05′38″ N, 122°56′35″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on the second Saturday of July each year from 9 p.m. to 11 p.m. (PDT). Except that when the first Saturday falls on July 1, this section will be enforced on the third Saturday of July. In 2006, this zone will be enforced on July 15th.

(12) *Ilwaco July 4th Committee Fireworks, Ilwaco, WA:*

(i) *Location.* All water of the Columbia River extending out to a 700′ radius from the launch site at 46°18′17″ N, 124°01′55″ W.

(ii) *Enforcement Period.* This section is enforced annually on the first Saturday of July from 9 p.m. to 11 p.m. (PDT). In 2006, this zone will be enforced on July 1st.

(13) *Milwaukie Centennial Fireworks Display, Milwaukie, OR:*

(i) *Location.* All water of the Willamette River enclosed by the following points: 45°26′41″ N, 122°38′46″ W following the shoreline to 45°26′17″ N, 122°38′36″ W then west to 45°26′17″ N, 122°38′55″ W following the shoreline to 45°26′36″ N, 122°38′50″ W then back to the point of origin.

(ii) *Enforcement Period.* This section is enforced annually on the third Saturday of July each year from 9 p.m. to 11 p.m. (PDT). Except that when the first Saturday falls on July 1, this section will be enforced on the fourth Saturday of July. In 2006, this zone will be enforced on July 22th.

(14) *Splash Aberdeen Waterfront Festival, Aberdeen, WA:*

(i) *Location.* All water of the Chehalis River extending out to 500 feet of the following points: 46°58′40″ N, 123°47′45″ W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

(15) *City of Coos Bay July 4th Celebration, Coos Bay, OR:*

(i) *Location.* All water of the Coos River extending out to 1200 feet of the following points: 43°22′12″ N, 124°12′39″ W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 9 p.m. to 11 p.m. (PDT).

* * * * *

Dated: March 20, 2006.

Patrick G. Gerrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. E6–4380 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2006–1]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new fees for special services and Licensing Division services, and that the Office has submitted to Congress proposed new statutory fees for certain other services. The proposed fees would recover a significant part of the costs to the Office of registering claims and provide full cost recovery for many services provided by the Office which benefit only or primarily the user of that service.

DATES: Comments should be in writing and received on or before April 27, 2006.

ADDRESSES: If hand delivered by a private party, an original and ten copies of any comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If sent by mail, an original and five copies of any comment should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel, Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 708 of the copyright law establishes two separate procedures for adjusting fees for Copyright Office services to account for increases in costs. Fees for services specifically enumerated in section 708(a)(1)–(9) (''statutory fees'') are adjusted according to the procedures set forth in section 708(b). This procedure includes the completion of a cost study, and the forwarding of an economic report and proposed fee schedule to Congress, which takes effect unless Congress enacts a law within 120 days disapproving of the new fees. The second procedure concerns fees for services not specifically enumerated in section 708(a)(1)–(9), and for the purposes of this rulemaking, these fees are termed ''discretionary fees.'' Section 708(a) authorizes the Register to set these fees at ''the cost of providing the service.'' As with the statutory fees, the Copyright Office adjusts the discretionary fees only after conducting a cost study to determine the cost of providing the services.

This is the third schedule of fees to be proposed under the current fee setting procedure which was adopted when section 708 was amended in 1997 with the passage of the Technical Amendments Act, Public Law 105–80, 111 Stat. 1529. The first schedule was adopted in 1999, see 63 FR 43426 (August 13, 1998) and 64 FR 29518 (June 1, 1999), and the second schedule was adopted three years later in 2002. To cover the rising costs of providing copyright services, most fees were increased in 2002. However, notable among fees that were not adjusted at that time was the basic registration filing fee, which was kept at the 1999 level. The Register provided a number of reasons for her determination that no increase in basic registration fees was warranted at the time. They included the substantial increase of 1999 which accounted for an acceptable level of cost recovery, the costs associated with increasing the fee, and the changes in processing anticipated from the Copyright Office's impending business process reengineering effort. 67 FR 38003 (May 31, 2002).

Because costs have continued to rise since the last fee adjustment in 2002, the Office undertook a third cost study to assess how well current fees allowed the Copyright Office to recover its costs of providing its services to the public. The result of that study is today's proposal to increase most fees to a level that allows the Office to recover a significant portion of its costs as contemplated by Congress.

I. Overview

The expenses of the Copyright Office have always been substantially funded through the charging of fees for the services provided, although programs relating to domestic and international copyright policy and public information have been generally paid for by appropriated funds. Yet, for the last fifty years, fees have not provided for full cost recovery. During this period, cost recovery through the charging of fees has ranged from 50% to 80% of the expenses of the Copyright Office. In fiscal year 2005, the Copyright Office collected $23,788,227 in fees, sufficient to offset only 56.7% of the total expenditures of the Office, whereas in 2002, fees covered just over 66% of the Office's costs for providing its services.

In order to place the Copyright Office on a sounder financial footing, a cost study was undertaken last year by the Office which evaluated all the fees charged by the Copyright Office. Based upon its findings, the Office determined that most fees for services mandated by statute should be adjusted to reflect increased costs of providing the various services. These proposed new fees falling within the rate adjustment procedure of section 708(b) were submitted to Congress on March 1,

2006. Congress now has 120 days to consider these fees. During that time, the Office is also providing the public with an opportunity to comment on the statutory fees which the Office intends to adjust to recover the increased costs of providing the specified services.

Section 708(a) also provides the Register of Copyrights with authority to fix fees for other services based on the cost of providing that service. Like the statutory fees, the Office is proposing to adjust these discretionary fees to reflect increases in the cost of providing those services and, in those instances where the service benefits primarily the user of that service, the fee has been set to recover the full cost to the Office of providing that service. However, before adopting these proposed new fees, the Office is providing the public with an opportunity to comment. The Copyright Office plans to implement the new discretionary fees on the same day the statutory fees are scheduled to become effective, July 1, 2006.

II. Discretionary Fees

In general, the proposed discretionary fees have been adjusted to reflect the current cost of providing the service. Before making this decision, the Office conducted a study of the costs of the services provided and took into account the criterion that the Register may set fees at a level no more than necessary to recover the reasonable costs incurred by the Copyright Office. Because costs have increased, and the Register is keenly aware of Congress's basic criterion of cost recovery, most fees will be increased. Some will be increased at full cost recovery where the service benefits only or primarily the requester, e.g, secure test processing, expedited handling of claims, and expedited searches. Fees for first and second level reconsideration of refusal to register a claim are also being increased, but not at the level of full cost recovery, since it may be helpful to courts to have the claims reexamined at a higher level, and the purpose of providing such review is to ensure that the Office's decisions on registration comply with the applicable legal standards.

While this notice will not discuss each fee increase individually because fees have been adjusted either to recover the cost of the service or to account for the rate of inflation since the last fee adjustment, the Copyright Office believes further clarification is useful for the following fees.

1. *Registration of GATT Group.* The Copyright Office has decided to eliminate the option of registering up to ten related, restored works published within the same calendar year as a GATT/Group. This service is seldom used and it is costly to the Office. Consequently, GATT/Group has been listed as discontinued. However, works that would have been filed under this provision can still be registered, although each work must be registered individually. Technical amendments will be made in the final rule to 37 CFR 202.12(c) to reflect this change.

2. *Recordation of Notices of Intent to Enforce (NIE's).* With the enactment of section 104A of the copyright law in 1993, the Copyright Office was given the responsibility of recording documents known as Notices of Intent to Enforce copyrights restored under the Uruguay Round Agreements Act. Because the term of eligibility for filing NIE's has concluded for most countries, this is now a seldom used service. The Copyright Office has decided to apply the same fees to NIE's as are applicable to other recorded documents.

3. *Search estimate by the Reference & Bibliography Section.* Currently, the Reference & Bibliography Section provides a free written estimate of the number of hours which will likely be needed to complete a search and report and an estimate of the fee to conduct this search. But in order to arrive at the estimate, the Reference and Bibliography Section actually performs a major part of the search; and if the client requesting the estimate decides not to order the search, the Office receives no fee to cover its cost of providing the estimate. Consequently, the Office will no longer provide free estimates under the new fee schedule. Instead, as with other services that are primarily for the benefit of the user, the Copyright Office is setting the fee at a level to recover its cost for the service provided. The fee to prepare a written estimate will now be $100. If the client requests that the search and report be undertaken, the $100 fee will be applied to the total fee charged.

4. *Handling fee for extra deposit copy for certification.* For claimants who wish to obtain certified copies of their deposits after issuance of the certificate of registration, the Copyright Office will accept an extra deposit copy to be certified upon registration of the claim. The current fee for this service is the same as the fee for the basic registration and it has been adjusted under the new schedule to the same level as the basic registration fee.

5. *Expedited Reference & Bibliography Search and Report.* The Copyright Office is adopting an hourly fee for providing a written search report based on an expedited search of the Copyright Office records. This fee replaces the current hourly fee and surcharge now used to cover the costs of these services. The new single fee covers both the search and the written report and has been calculated to maintain full cost recovery.

6. *Copying fees.* Current fees do not recover the costs of providing copies of Copyright Office records or copies of deposits, often exceeding by approximately 50% the amount of fees received by the Office for these services. To eliminate this shortfall, the new fees for various forms of reproductions have been increased by up to 50% and, in the case of photocopying documents, a minimum fee of $6.00 has been added to cover the administrative costs of handling these requests. Moreover, the Office has decided to harmonize the fees for photocopying throughout the Office.

III. Statutory Fees

The Office is basing its conclusion that most statutory fees should be increased upon its findings from the cost study and after considering a number of policy and economic factors such as fairness and equity and consideration of the objectives of the copyright system, projected inflation, and the effect of these increases on the public's decision to utilize these services. In light of these considerations, a number of statutory fees have been adjusted to achieve or maintain full cost recovery, *e.g.,* the fees for filing a supplemental registration, filing a registration for renewal or for a group of related works, issuing a receipt for a deposit under 17 U.S.C. 407, recording documents of various types, and providing additional certificates, whereas other statutory fees have been adjusted only to account for inflation since the last fee adjustment in 2002.

Moreover, the Office has concluded that the basic registration filing fee, which was not adjusted in 2002, should be increased by 50% this year from $30 to $45. However, this increase does not reflect full cost recovery for the service provided nor does the Office seek to recover its full cost for registration of a single claim. The registration system provides benefits to the public and to the Library of Congress that offset the need to set fees at a level that would recover full costs. Although the copyright law provides incentives to register copyrights, *see* 17 U.S.C. 410(c), 411(a), and 412, the Office nevertheless recognizes that copyright owners balance the benefits of these incentives against the costs of registration, and that there is a fair degree of price elasticity with respect to registration. Therefore, the Office has set the fee for the basic registration at a level to allow reasonable recovery of costs but not so

high as to discourage copyright owners from filing their claims with the Office.

The ''Analysis and Proposed Copyright Fee Schedule to Go into Effect July 1, 2006,'' which was submitted to Congress on March 1, 2006, is posted on the Office's Web site at: *http://www.copyright.gov/reports/studies/proposedfees2006.pdf.*

IV. Proposed New Statutory and Filing Fees

Based upon the cost study prepared by the Copyright Office, the Copyright Office is proposing a new fee schedule for registration and related services, special services, and Licensing Division services.

A comparison of existing and new fees is included in the following charts:

	Current fees	Fee to become effective July 1, 2006
Registration, Recordation and Rated Services		
(1) Registration of a basic claim in an original work of authorship:		
Forms TX, SE, PA, VA (including Short Forms), and Form SR	$30	$45
(2) Registration of a claim in a group of contribution to periodicals (GR/CP)	30	45
(3) Registration of a renewal claim (Form RE):		
Claim without Addendum	60	75
Addendum	30	220
(4) Registration of a claim in a mask work (Form MW)	75	95
(5) Registration of a claim in a group of serials (Form SE/Group) [per issue, with minimum 2 issues] [1]	15	25
(6) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN)	55	70
(7) Registration of a claim in a restored copyright (Form GATT)	30	45
(8) Registration of a claim in a group of restored works (Form GATT Group [per issue, with $45 minimum] [2]	15	discontinued.
(8) Registration of a group of published photographs [3]	NA	75
(9) Preregistration of certain unpublished works [3]	100	150
(10) Registration of a correction or amplification to a claim (Form CA)	100	115
(11) Providing an additional certificate of registration	30	40
(12) Certification of other Copyright Office records (per hour)	80	150
(13) Search-report prepared from official records (per hour)	75	150
Estimate of search fee [4]	NA	100
(14) Location of Copyright Office records (per hour)	80	150
Location of in-process materials (per hour)	100	150
(15) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	80	95
Additional titles (per group of 10 titles)	20	25
(15) Recordation of a Notice of Intention to Enforce (NIE) a restored copyright containing no more than one title [5].	30	discontinued, see item 14.
Additional NIE titles (each)	1	discontinued, see item 14.
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12	12
(17) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2) [3].	30	80
(18) Issuance of a receipt for a § 407 deposit	10	20
(19) Registration of a claim in a vessel hull [3]	140	200
Special Services		
(1) Service charge for deposit account overdraft	100	150
(2) Service charge for dishonored deposit account replenishment check	35	75
(3) Appeals:		
(i) First appeal	200	250
Additional claim in related group	20	25
(ii) Second appeal	500	500
Additional claim in related group	20	25
(4) Secure test processing charge, per hour	60	150
(5) Copying of Copyright Office Records by staff,[3]		
Photocopy (b&w) (per page, minimum $6)	0.50	0.50
Photocopy (color) (per page, minimum $6)	1	1.50
Photograph (Polaroid)	10	15
Photograph (digital)	30	45
Slide	2	3
Audiocassette (first 30 minutes)	50	75
Additional 15 minute increments	20	20
Videocassette (first 30 minutes)	50	75
Additional 15 minute increments	25	25
CD or DVD	40	50
Zip or floppy disk	75	100
(6) Special handling fee for a claim	580	685
Each additional claim using the same deposit	50	50
(7) Special handling fee for recordation of a document	330	435
(8) Handling fee of extra deposit copy for certification [6]	30	45
(9) Full-term retention of a published deposit	425	425
(10) Expedited Reference and Bibliography search and report [7]	NA	400/hr.
(surcharge, per hour)	250	discontinued.
(11) Expedited Certification & Documents services (surcharge, per hour)	200	240
(12) Notice to Libraries and Archives [3]	50	50

	Current fees	Fee to become effective July 1, 2006
Each additional title	20	20
(13) Use of COINS terminal in LM–B14 (per hour) [3]	20	25
(14) Fed Ex Service [3]	15	35
(15) Delivery of documents via facsimile (per page, 7 page maximum) [3]	1	1
Licensing Division Services		
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115)	12	12
(2) Certificate of Filing a Notice of Intention (17 U.S.C. 115)	8	discontinued.[9]
(3) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118	50	125
(4) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States.	50	50
(5) Initial Notice of Digital Transmission of Sound Recording (17 U.S.C. 114)	20	20
Amendment of 17 U.S.C. 114 Notice	20	20
(6) Statement of Account Amendment (Cable Television Systems and Satellite Carriers, 17 U.S.C. 111 and 119).	15	95
(7) Statement of Account Amendment (Digital Audio Recording Devices or Media, 17 U.S.C. 1003) [8]	20	95
(8) Photocopy made by staff (b&w) (per page, minimum $6)	0.40	0.50
(9) Search, per hour	65	150
(10) Certification of Search Report	65	150

[1] Amended to replace $45 minimum with a 2 issues minimum.
[2] To be removed; *see* section II 1.
[3] New items: fees not currently listed in 37 CFR 201.3(d).
[4] New fee, *see* section II 3.
[5] *See* section II 2.
[6] New item: fee not currently listed in 37 CFR 201.3(d), *see* section II 4.
[7] New fee, *see* section II 5.
[8] To be combined with item 6 in the final regulation.
[9] Discontinued service, *see* 69 FR 34582 (June 2, 2004).

V. Technical Amendments

The Office will adopt technical amendments as needed to conform existing regulations with the changes proposed in this notice.

VI. Request for Comments

The Copyright Office is publishing the proposed new fees in order to provide the public with an opportunity to comment by April 27, 2006. The new fees will take effect on July 1, 2006, unless the Copyright Office has received adverse substantive comments, and publishes a notice withdrawing the new fees before that date.

Dated: March 21, 2006.

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. E6–4385 Filed 3–27–06; 8:45 am]

BILLING CODE 1410–30–P

Notices

Federal Register
Vol. 71, No. 59
Tuesday, March 28, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 23, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Information Collection Pursuant to the Cabin User Fee Fairness Act of 2000 (16 U.S.C. 6201–13).

OMB Control Number: 0596–NEW.

Summary of Collection: The Cabin User Fee Fairness Act (CUFFA) of 2000 (16 U.S.C. 6201–13) directs the Forest Service (FS) to promulgate regulations and adopt policies for assessing a base cabin user fee for recreation residence on National Forest System lands. Section 614 of CUFFA establishes a ''transition period'', defines how long the transition period will last, and provides guidelines on how the annual cabin user fees should be assessed and adjusted during the transition period. Upon adoption of the final regulations and agency directives, recreation resident permit holders will have 2 years to request that the FS take one of the following actions to establish a new base cabin user fee: (1) Conduct a new appraisal pursuant to the final regulations and policies; (2) commission a peer review of an existing appraisal report; or (3) establish a new fee based on the market value of the typical lot identified in an existing appraisal report that was completed and approved after September 30, 1995.

Need and Use of the Information: The information request is necessary for the FS to collect the permit holder's request, agreement, and accompanying signatures. The information will also assist the FS in establishing an accurate base cabin user fee during the transition period prescribed in CUFFA. Failure to collect this information could prevent the FS from complying with the provision of CUFFA and deny holders the opportunity to exercise one of the three options provided under CUFFA.

Description of Respondents: Individuals or households.

Number of Respondents: 305.

Frequency of Responses: Reporting: Other (One Time Collection).

Total Burden Hours: 81.25.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–4449 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest Plan Amendment Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) that evaluates a potential significant amendment to the 1997 Tongass National Forest Plan. The Record of Decision will consider and identify changes, if any, to the current 1997 Forest Plan.

DATES: A specific proposed action is expected to be identified and posted on the Web site, *http://tongass-fpadjust.net*, in May 2006. The Draft EIS is expected to be mailed in November 2006, which will begin a 90-day public comment period. Public meetings and subsistence hearings will be scheduled during the 90-day comment period. The Record of Decision is expected to be signed in July 2007.

FOR FURTHER INFORMATION CONTACT: Additional information is available on the Tongass Forest Plan Adjustment Internet site at *http://www.tongass-fpadjust.net*. General and specific comments on the amendment can be submitted online at this Internet site. Questions about the project can be also directed to Lee Kramer, Forest Plan Project Manager, (Telephone 907–586–8811, ext. 225 or e-mail *lkramer@fs.fed.us*). Written inquiries can be directed to: Forest Supervisor, Tongass National Forest, Attn: Forest Plan Amendment, 648 Mission Street, Ketchikan, AK 99901.

SUPPLEMENTARY INFORMATION: The National Forest Management Act of 1976 requires the Forest Service to develop land and resource management plans for each unit of the National Forest System. These plans are often referred to as forest plans. The Tongass National Forest adopted its first forest plan in 1979. The Tongass National Forest issued a Record of Decision (ROD), which revised its forest plan in 1997. A new Forest Plan Record of Decision was issued in 1999, which was set aside in 2001 as a result of litigation. Other litigation, occurring at the same

time, indicated the Forest Plan EIS needed to be supplemented to evaluate roadless areas on the Tongass for wildnerness recommendations. Therefore, a Forest Plan Supplemental EIS was completed in 2003.

The Tongass forest plan is being amended to respond to the court decision in *National Resources Defense Council* v. *U.S. Forest Service*, 421 F.3d 797 (9th Circ. 2005). In that decision, the Ninth Circuit held that the environmental impact statement and record of decision for the Tongass forest plan adopted in 1997 had errors relating to the use of projected market demand for timber, the range of alternatives considered, and the cumulative effects of activities on non-National Forest System lands.

In addition, ongoing implementation, maintenance, and monitoring of the 1997 Forest Plan has generated a list of potential changes. Most of these changes were identified during the 5 Year Review of the Forest Plan conducted in 2004 and documented on the 5 Year Review Web site (*http://www.tongass-5yearreview.net/*). For additional related information see the Forest Plan Maintenance Program Web sites (*http://www.tongass-fpmaintprog.net/*). Examples of these potential Forest Plan changes include: new director for invasive species management, consideration of new direction on Off Highway Vehicle (OHV) use, and heritage sacred sites standards and guidelines. Information on these and other Forest Plan-related work items can be found on the Forest Plan Adjustment Web site (*http://tongass-fpadjust.net*).

This amendment will draw upon a wealth of existing information. The environmental impact statements and planning records for the 1997 forest plan and the 2003 wilderness evaluation contain a great deal of analysis of land allocations, effects on communities and impacts to fish and wildlife. It will also be informed by the ideas and information from five substantial public comment efforts that have occurred since the 1997 forest plan was adopted: (1) The 69 day comment period for the proposed national roadless area conservation rule that began May 10, 2000; (2) the 60 day comment period for the advance notice of proposed rulemaking for the roadless area conservation rule that began July 10, 2001; (3) the 90-day comment period for the Tongass 2003 wilderness area Supplemental EIS that began May 17, 2002; (4) the 30 day comment period for the interim roadless area conservation rule for the Tongass National Forest that began July 15, 2003; and (5) the 122 day comment period on the 2004 roadless area conservation rule that began July 12, 2004.

Further analysis, including new estimates of timber market demand by the Forest Service Pacific Northwest Research Station, follow-up studies commissioned after the 1997 forest planning process, and experience gained while implementing the 1997 Tongass forest plan will also aid in responding to the inadequacies identified by the Court and the potential changes that surfaced during the Forest Plan 5 Year Review. Appropriate alternatives for amending the Forest Plan will be developed and then evaluated in the EIS. The major issues that are likely to drive alternative development include timber demand and supply, wildlife and fish conservation, and maintaining inventoried roadless areas.

Since 1997 timber harvest and road construction have been well below the level permitted by the Forest Plan. Because the 5 Year Review did not identify any individual concerns requiring revision, the proposed action would amend the Forest Plan. The amendment will respond to the 9th Circuit Court and some of the concerns identified in the 5 Year Review. In addition, the proposed action will integrate past decisions (the 1997, 1999, and 2003 RODs, and all plan amendments completed to date) to resolve confusion regarding current management direction for the Tongass.

The Forest Service recently issued the 2005 Forest Planning Rule. Because the Court indicated that an EIS needed to be prepared, and because the 2005 Rule does not require EISs for Forest Plans, the planning regulations in effect before November 9, 2000 will be followed for this amendment.

Opportunities for the public to participate in the development of the EIS will be provided throughout the process. The Forest Service is using a combination of methods to engage and involve the public, but is emphasizing a Web-based approach. A Web site has already been established to provide information to the public and to accept comments (*http://www.tongass-fpadjust.net/*). The public is invited to visit this site to learn more about the amendment process and to provide comment on the process or on specific work items. Other potential public involvement methods include public mailings, public meetings, and use of the news media. Information from previous public input efforts related to the 1997 Forest Plan and the 2003 Supplemental EIS, will be incorporated.

The comment period on the Draft EIS will be 90 days from the date the Environmental Protection Agency (EPA) publishes the notice of availability of the EIS in the **Federal Register**. A series of public meetings and subsistence hearings will be held during the 90-day public comment period. The Draft EIS is projected to be filed with the EPA in November 2006.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental preview of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under

36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

No outside permits or licenses are required to implement the proposed action. *Responsible Official:* The Tongass Forest Supervisor, 648 Mission Street, Ketchikan, AK, 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: March 20, 2006.

Forrest Cole,

Forest Supervisor.

[FR Doc. 06–2952 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest, USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Thursday, April 27, 2006. The meeting is scheduled to begin at 6:30 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the are. Tentative agenda items include new advisory council member introductions, roles and responsibilities, current project updates and future projects.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comments period. Written comments may be submitted prior to the April 27th by sending them to Designated Federal Official Paul Matter at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Paul Matter; Williamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: March 21, 2006.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 06–2955 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will meet at the Snohomish County Administration Building in Everett, Washington to review and recommend Title II projects for FY 2007.

DATES: Tuesday, April 11, 2006 (if needed) and Thursday, April 20, 2006. Both meetings will be from 9 a.m. until 4 p.m.

ADDRESSES: Snohomish County Administration Building, Willis Tucker Conference Room (third floor), 3000 Rockefeller Ave. in Everett, WA 98201.

FOR FURTHER INFORMATION CONTACT: Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Highway, P.O. Box 305, Skykomish, WA 98288 (phone: 360–677–2414).

SUPPLEMENTARY INFORMATION: All Snohomish County RAC meetings are open to the public. Interested citizens are encouraged to attend. The Snohomish County RAC reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars, under Public Law 106–393, H.R. 2389, The Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

Dated: March 21, 2006.

Allen Gibbs,

Acting Designated Federal Official.

[FR Doc. 06–2956 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet at the Snoqualmie Ranger District Office in North Bend, WA to review and select Title II projects for FY 2007.

DATES: Thursday, May 4, 2006, from 9 a.m. until 4 p.m.

ADDRESSES: Snoqualmie Ranger District, North Bend Office, 42404 SE North Bend Way, North Bend, WA 98045.

FOR FURTHER INFORMATION CONTACT: Jim Franzel, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Snoqualmie Ranger District, 42404 SE North Bend Way, WA 98045–0545 (phone 425–888–1421, Extension 230), or Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Wooley, Washington 98284 (360–856–5700).

SUPPLEMENTARY INFORMATION: All South Mt. Baker-Snoqualmie RAC meetings are open to the public. Interested citizens are encouraged to attend. The South Mt. Baker-Snoqualmie RAC reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars, under Public Law 106–393, H.R. 2389, The Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

Dated: March 21, 2006.

Allen Gibbs,

Acting Designated Federal Official.

[FR Doc. 06–2957 Filed 3–27–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–852, A–580–841, C–580–842)

Revocation of Antidumping and Countervailing Duty Orders: Structural Steel Beams From Japan and South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2005, the Department of Commerce (''the Department'') initiated its sunset reviews of the antidumping duty (''AD'') orders on structural steel beams (''beams'') from Japan and South Korea (''Korea''), and the countervailing duty (''CVD'') order on beams from Korea. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the International Trade Commission (''the ITC''), in its sunset reviews, determined that revocation of the AD orders on beams from Japan and Korea and the CVD order on beams from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Structural Steel Beams from Japan and Korea*, 71 FR 13431 (March 15, 2006). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the AD orders on beams from Japan and Korea and the CVD order on beams from Korea.

EFFECTIVE DATE: June 19, 2005 - Japan; August 14, 2005 - Korea (CVD); August 18, 2005 - Korea (AD).

FOR FURTHER INFORMATION CONTACT: Robert James or Dana Mermelstein (AD orders), Tipten Troidl or Brandon Farlander (CVD order), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0649, (202) 482–1391, (202) 482 - 1767 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The products covered by these orders are doubly–symmetric shapes, whether hot–or cold–rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products include, but are not limited to, wide–flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M–shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of these orders unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these orders: Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The products subject to these orders are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000,[1] 7216.99.0000,[2] 7228.70.3040,[3] 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise in these orders is dispositive.

Background

On June 19, August 18, and August 14, 2000, the Department issued the AD orders on beams from Japan and Korea and the CVD order on beams from Korea, respectively. *See Structural Steel Beams from Japan: Notice of Antidumping Duty Order*, 65 FR 37960 (June 19, 2000), *Structural Steel Beams From South Korea: Notice of Antidumping Duty Order*, 65 FR 50502 (August 18, 2000), and *Notice of Countervailing Duty Order: Structural Steel Beams from the Republic of Korea*, 65 FR 49542 (August 14, 2000). On May 2, 2005, the Department initiated, and the ITC instituted, sunset reviews of the AD and CVD orders on beams from Japan and Korea. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005). As a result of its CVD sunset review, the Department found that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy, and notified the ITC of the level of subsidy likely to prevail were the order to be revoked. *See Final Results of Expedited Sunset Review of the Countervailing Duty Order: Structural Steel Beams from South Korea*, 70 FR 53167 (September 7, 2005). As a result of its AD sunset reviews, the Department found that revocation of the AD orders would be likely to lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margin likely to prevail were the orders to be revoked. *See Structural Steel Beams from Japan and South Korea; Final Results of Expedited Sunset Reviews of Antidumping Duty Orders*, 70 FR 53633 (September 9, 2005). On March 15, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD orders on beams from Japan and Korea, and the CVD order on beams from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Structural Steel Beams from Japan and Korea*, 71 FR 13431 (March 15, 2006) and USITC Publication 3840 (March 2006), entitled *Structural Steel Beams from Japan and Korea* (Inv. Nos. 701–TA–401 and 731–TA–853–854 (Review)).

Determination

As a result of the determination by the ITC that revocation of these AD and CVD orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the AD orders on beams from Japan and Korea and the CVD order on beams from Korea. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is June 19, 2005, August 18, 2005, and August 14, 2005 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notices of the AD order on Japan, the AD order on Korea, and the CVD order on Korea, respectively). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after June 19, 2005, August 18, 2005, and August 14, 2005, the effective dates of revocation of the AD orders and the CVD order. The Department will complete any pending administrative reviews of these orders and will conduct

[1] HTSUS subheading 7216.91.0000 was no longer in use as of 2004, and was replaced by 7216.91.0010 and 7216.91.0090 in that year.

[2] HTSUS subheading 7216.99.0000 was no longer in use as of 2004, and was replaced by 7216.99.0010 and 7216.99.0090 in that year.

[3] HTSUS subheading 7228.70.3040 was no longer in use as of 2005. What was previously covered by that number is covered within 7228.70.3010 and 7228.70.3041 starting in 2005.

administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year sunset reviews and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: March 22, 2006

Stephen J. Claeys.

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–4481 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China (''PRC''): Extension of Time Limit for Preliminary Results of 2004/2005 New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Javier Barrientos; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208 and (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** an antidumping duty order covering certain frozen warmwater shrimp from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005). The Department received a timely request from Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the PRC, which has a February annual anniversary month and an August semi–annual anniversary month. On September 30, 2005, the Department initiated a review with respect to Regal. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Initiation of New Shipper Review*, 70 FR 58679 (October 7, 2005).

The Department has issued its antidumping duty questionnaire and supplemental questionnaires to Regal. The deadline for completion of the preliminary results is currently March 29, 2006.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. See 19 CFR 351.214(i)(2).

Pursuant to section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department determines that this review is extraordinarily complicated. Specifically, the Department requires additional time to analyze all questionnaire responses and to conduct verification of the responses submitted, as well as to examine whether Regal's U.S. sale was made on a bona fide basis. Additionally, there are complicated issues surrounding the Department's calculation of normal value, particularly with respect to the valuation of shrimp farming inputs. Based on the timing and complexity of the case, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Accordingly, the Department is extending the time limit for the completion of the preliminary results by 90 days to June 27, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results, in turn, will be due 90 days after the date of issuance of the preliminary results, unless extended.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act.

Dated: March 22, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–4483 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–811, A–588–831, C–475–812)

Grain–Oriented Electrical Steel From Italy and Japan: Final Results of Sunset Reviews and Revocation of Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2006, the Department of Commerce (''the Department'') initiated the sunset reviews of the antidumping duty (''AD'') orders on grain–oriented electrical steel (''GOES'') from Italy and Japan and of the countervailing duty (''CVD'') order on GOES from Italy. (*See* 70 FR 5243). Because the domestic interested parties did not participate in these sunset reviews, the Department is revoking these AD and CVD orders.

EFFECTIVE DATE: March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Brandon Farlander, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2849 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 7, June 10, and August 12, 1994, respectively, the Department issued the CVD order on GOES from Italy (59 FR 29414) and the AD orders on GOES from Japan (59 FR 29984) and Italy (59 FR 41431). On December 1, 1999, the Department initiated sunset reviews on these orders and later published its notice of continuation of the AD and CVD orders. *See Continuation of Antidumping Duty Orders and Countervailing Duty Order: Grain–Oriented Silicon Electrical Steel From Italy and Japan*, 66 FR 14889 (March 14, 2001) (''*GOES Continuation*''). On February 1, 2006, the Department initiated the second sunset reviews of these orders.

We did not receive a notice of intent to participate from domestic interested parties in any of these sunset reviews by the deadline dates. *See* 19 CFR 351.218(d)(1)(iii)(A). As a result, the Department determined that no domestic interested party intends to participate in these sunset reviews, and on February 21, 2006, we notified the International Trade Commission, in writing, that we intended to issue final determinations revoking these AD and CVD orders. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Scope of the Orders

The merchandise subject to these orders includes GOES, which is a flat–rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The products covered by these orders are provided for under the following item numbers of the Harmonized Tariff Schedule of the United States (''HTSUS''): 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in these sunset reviews, the Department finds that no domestic interested party is participating in these sunset reviews. Therefore, consistent with 19 CFR 351.222(i)(2)(i) and section 751(c)(6)(A)(iii) of the Act, we are revoking these AD and CVD orders effective March 14, 2006, the fifth anniversary of the date the Department published the continuation of the AD and CVD orders. (*See GOES Continuation*.)

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after March 14, 2006. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD and CVD deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year (sunset) reviews and notice are issued and published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: March 22, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–4477 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–820)

Notice of Rescission of Antidumping Duty Administrative Review: Prestressed Concrete Steel Wire Strand From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 24, 2006, the Department of Commerce (the Department) published a notice in the **Federal Register** announcing the initiation of an administrative review of the antidumping duty order on prestressed concrete steel wire strand from Thailand, covering the period January 1, 2005, to December 31, 2005. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Thailand: Prestressed Concrete Steel Wire Strand*, 71 FR 9519 (February 24, 2006). The review covers Siam Industrial Wire Co. Ltd. (SIW). We are now rescinding this review as a result of SIW's timely withdrawal of its request for an administrative review.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Shane Subler at (202) 482–0631 or (202) 482–0189, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b)(2), on January 31, 2006, SIW requested an administrative review of the antidumping duty order on prestressed concrete steel wire strand from Thailand. On February 24, 2006, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review of this order for the period January 1, 2005, to December 31, 2005 (71 FR 9519). SIW withdrew its request for an administrative review on March 7, 2006.

Rescission of Administrative Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. SIW, the only interested party to request a review, withdrew its request for an administrative review within the 90–day period. Therefore, the Department is rescinding this administrative review. The Department will issue appropriate instructions directly to U.S. Customs and Border Protection.

This notice is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 22, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–4486 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–1767 or 6071, respectively.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly

updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period October 1, 2005, through December 31, 2005.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 22, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

APPENDIX
SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY[1]

Country	Program(s)	Gross[2] Subsidy ($/lb)	Net[3] Subsidy ($/lb)
Austria	European Union Restitution Payments	$ 0.00	$ 0.00
Belgium	EU Restitution Payments	$ 0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.30	$ 0.30
Cyprus*	EU Restitution Payments	$ 0.00	$ 0.00
Denmark	EU Restitution Payments	$ 0.00	$ 0.00
Finland	EU Restitution Payments	$ 0.00	$ 0.00
France	EU Restitution Payments	$ 0.00	$ 0.00
Germany	EU Restitution Payments	$ 0.00	$ 0.00
Greece	EU Restitution Payments	$ 0.00	$ 0.00
Hungary*	EU Restitution Payments	$ 0.00	$ 0.00
Ireland	EU Restitution Payments	$ 0.00	$ 0.00
Italy	EU Restitution Payments	$ 0.00	$ 0.00
Lithuania*	EU Restitution Payments	$ 0.00	$ 0.00
Luxembourg	EU Restitution Payments	$ 0.00	$ 0.00
Netherlands	EU Restitution Payments	$ 0.00	$ 0.00
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
	Consumer Subsidy	*$ 0.00*	*$ 0.00*
	Total	$ 0.00	$ 0.00
Poland*	EU Restitution Payments	$ 0.00	$ 0.00
Portugal	EU Restitution Payments	$ 0.00	$ 0.00
Slovenia*	EU Restitution Payments	$ 0.00	$ 0.00
Spain	EU Restitution Payments	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00
U.K.	EU Restitution Payments	$ 0.00	$ 0.00

* This notice has been modified to reflect the enlargement of the European Union (EU) to 25 countries on May 1, 2004. See Modification of the Tariff -Rate Import Quota for Certain Cheeses, 69 FR 77308 (December 27, 2004).

[1] This chart includes only those countries which exported articles of cheese to the United States during 4th Quarter, 2005.

[2] Defined in 19 U.S.C. 1677(5).

[3] Defined in 19 U.S.C. 1677(6).

[FR Doc. E6–4480 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Honey from Argentina: Notice of Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 1, 2006, in response to a timely request from the American Honey Producers Association and the Sioux Honey Association (Petitioner), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on honey from Argentina. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006) (*Initiation Notice*). This administrative review covered the period January 1, 2005 through December 31, 2005. We are now rescinding this review as a result of Petitioner's withdrawal of its requests for an administrative review of this order.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Dara Iserson or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone: (202) 482–4052 and (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the Department published a notice of ''Opportunity to Request Administrative Review'' of the countervailing duty order for the period of January 1, 2005 through December 31, 2005. *See Antidumping or Countervailing Duty Oder, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70

FR 72109 (December 1, 2005). On December 30, 2005, Petitioner requested a review of the countervailing duty order on honey from Argentina. In response to this request, on February 1, 2006, the Department initiated a countervailing duty administrative review on honey from Argentina. *See Initiation Notice*.

On March 6, 2006, pursuant to section 351.213(d)(1) of the Department's regulations, Petitioner withdrew its request for an administrative review of the countervailing duty order on honey from Argentina. No other party requested an administrative review of this countervailing duty order.

Rescission of the Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The initiation notice for this review was published on February 1, 2006. We received Petitioner's withdrawal request on March 6, 2006, within 90 days after publication of the initiation notice. Since Petitioner withdrew its request for review of the countervailing duty order in a timely manner, and since it was the only party that requested a review, the Department is rescinding this administrative review. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

Administrative Protective Orders

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 section 351.305(a)(3) of the Department's regulation. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i) of the Act and section 351.213(d)(4) of the Department's regulations.

Dated: March 22, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–4484 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–357–815)

Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2006, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products (HRC) from India, covering the period January 1, 2005, through December 31, 2005, and one manufacturer/exporter of the subject merchandise, Essar Steel Limited (Essar). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006). The Department has preliminarily determined that the review should be rescinded due to Essar's lack of entries of subject merchandise during the period of review (POR).

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–0395.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the countervailing duty order on HRC from India. *See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001). On December 1, 2005, the Department published a notice of opportunity to request an administrative review of the countervailing duty order. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 72109 (December 1, 2005). In response to a request from United States Steel Corporation, petitioner, the Department initiated an administrative review of the countervailing duty order on HRC from India with respect to Essar. On February 16, 2006, Essar requested that the Department rescind the administrative review with respect to Essar, asserting that they had made no shipments of subject merchandise to the United States during the POR. *See* letter from Arent Fox PLLC, on behalf of Essar, dated February 16, 2006, on file in the Central Records Unit (CRU).

Scope of Order

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high–strength low–alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the

quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Intent to Rescind Administrative Review

In its February 16, 2006, request that the Department rescind the review, Essar asserted that it had made no shipments of subject merchandise during the POR. The petitioner did not comment on Essar's claim of no shipments. On February 27, 2006, the Department conducted a Customs query to ascertain whether there were any entries of the subject merchandise from Essar during the POR; the query showed that there were none. *See* Memorandum to the File from the Team regarding Customs Query dated March 15, 2006, the public version of which is on file in the CRU. Thus, the Department was able to confirm that Essar had no entries of subject merchandise during the POR.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review if the Secretary concludes that during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. *See Certain Hot–Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999), and *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003). Therefore, because Essar had no entries of subject merchandise during the POR, consistent with the regulation and our practice, we preliminarily determine to rescind this review.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this preliminary notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than five days after the time limit for filing the case brief. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of this preliminary notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of this preliminary notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d).

Dated: March 22, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–4478 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Stainless Steel Plate in Coils from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation of Countervailing Duty Order, in Whole

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on stainless steel plate in coils from Italy because we have concluded that substantially all domestic producers lack interest in the relief provided by this order.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey R. Twyman, AD/CVD Operations, Office 1, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0182 and (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1999, the Department of Commerce (the ''Department'') published a countervailing duty (''CVD'') order on stainless steel plate in coils (''SSPC'') from Italy. *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa*, 64 FR 25288 (May 11, 1999). The order was amended on March 11, 2003. *See Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa*, 68 FR 11524 (March 11, 2003). The amended order was corrected on April 24, 2003. *See Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa; Notice of Correction to the Amended Countervailing Duty Orders*, 68 FR 20115 (April 24, 2003).

On December 2, 2005, the Department received a request from Allegheny Ludlum Corporation and AK Steel Corporation, two of the petitioners in the original investigation, that the Department initiate a changed circumstances review for purposes of revoking the CVD order. Specifically, Allegheny Ludlum Corporation and AK Steel Corporation requested that the CVD order be revoked *ab initio* and that the Department fully refund any countervailing duties deposited pursuant to the order on unliquidated entries. Allegheny Ludlum Corporation and AK Steel Corporation state that they are no longer interested in maintaining the CVD order or in the imposition of countervailing duties on the subject merchandise.

On January 4, 2006, the Department published a notice of initiation of a changed circumstances review of the CVD order on SSPC from Italy. *See Stainless Steel Plate in Coils from Italy: Initiation of Countervailing Duty Changed Circumstances Review and Notice of Consideration of Revocation of Order*, 71 FR 328 (January 4, 2006) (''*Initiation Notice*''). In the *Initiation Notice*, we indicated interested parties could submit comments. No comments were received.

On February 14, 2006, the Department preliminarily revoked the order effective September 4, 1998. *See Stainless Steel Plate in Coils from Italy: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent to Revoke Order*, 71 FR 7736 (February 14, 2006) (''*Preliminary Results*''). In the *Preliminary Results*, we again afforded interested parties an opportunity to submit comments. We did not receive any comments following the publication of the *Preliminary Results*.

Scope of the Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat–rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold–rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Final Results of Review and Revocation of the Countervailing Duty Order, in Whole

Pursuant to section 751(d)(1) of the 1930 Tariff Act, as amended (the ''Act''), and 19 CFR 351.222(g), the Department may revoke an antidumping or CVD order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request that shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) other changed circumstances sufficient to warrant revocation exist. The Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001).

As noted above and in the *Preliminary Results*, Allegheny Ludlum Corporation and AK Steel Corporation requested this changed circumstances review on the basis that they are no longer interested in maintaining the CVD order or in the imposition of CVD duties on the subject merchandise. Also, the parties to the litigation concerning these entries have agreed to withdraw their appeals.

Because the Department did not receive any comments in response to the *Initiation Notice* or the *Preliminary Results* opposing this changed circumstances review or the preliminary decision to revoke, in whole, the CVD order effective September 4, 1998, we find that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order. In accordance with sections 751(b), 751(d), and 782(h) of the Act and 19 CFR 351.216 and 351.222(g), the Department determines that there is a reasonable basis to find that changed circumstances exist sufficient to warrant revocation of the order. Therefore, the Department is revoking the order on SSPC from Italy, in whole, with regard to the products described above under the ''Scope of the Order'' section.

Instructions to U.S. Customs and Border Protection

In accordance with 19 CFR 351.222(g), upon dismissal by the court of all pending appeals involving the

subject merchandise as described above under the ''Scope of the Order'' section, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to countervailing duties, all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 4, 1998, *i.e.*, the publication date of the Department's *Preliminary Determination* in the underlying investigation. In accordance with section 778 of the Act, we will also instruct CBP to pay interest on any refunded CVD deposits with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 11, 1999, the date of publication in the **Federal Register** of the CVD order.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) 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. *See* 19 USC 1677f and 19 CFR Part 354.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: March 21, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–4482 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

C–475–825

Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation of Countervailing Duty Order, in Whole

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on stainless steel sheet and strip in coils from Italy because we have concluded that substantially all domestic producers lack interest in the relief provided by this order.

EFFECTIVE DATE: March 28, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey R. Twyman, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0182 and (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department of Commerce (the ''Department'') published a countervailing duty (''CVD'') order on stainless steel sheet and strip in coils (''SSSS'') from Italy. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999). On December 2, 2005, the Department received a request from Allegheny Ludlum Corporation and AK Steel Corporation, two of the petitioners in the original investigation, that the Department initiate a changed circumstances review for purposes of revoking the CVD order. Specifically, Allegheny Ludlum Corporation and AK Steel Corporation requested that the CVD order be revoked *ab initio* and that the Department fully refund any countervailing duties deposited pursuant to the order on unliquidated entries. Allegheny Ludlum Corporation and AK Steel Corporation state that they are no longer interested in maintaining the CVD order or in the imposition of countervailing duties on the subject merchandise.

On January 4, 2006, the Department published a notice of initiation of a changed circumstances review of the CVD order on SSSS from Italy. *See Stainless Steel Sheet and Strip in Coils from Italy: Initiation of Countervailing Duty Changed Circumstances Review and Notice of Consideration of Revocation of Order*, 71 FR 329 (January 4, 2006) (''*Initiation Notice*''). In the *Initiation Notice*, we indicated interested parties could submit comments. No comments were received.

On February 14, 2006, the Department preliminarily revoked the order effective November 17, 1998. *See Stainless Steel Sheet and Strip in Coils from Italy: Preliminary Results of Countervailing Duty Changed Circumstances Review and Intent to Revoke Order*, 71 FR 7737 (February 14, 2006) (''*Preliminary Results*''). In the *Preliminary Results*, we again afforded interested parties an opportunity to submit comments. We did not receive any comments following the publication of the *Preliminary Results*.

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat

treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high–temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Final Results of Review and Revocation of the Countervailing Duty Order, in Whole

Pursuant to section 751(d)(1) of the 1930 Tariff Act, as amended (the ''Act''), and 19 CFR 351.222(g), the Department may revoke an antidumping or CVD order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request that shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) other changed circumstances sufficient to warrant revocation exist. The Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001).

As noted above and in the *Preliminary Results*, Allegheny Ludlum Corporation and AK Steel Corporation requested this changed circumstances review on the basis that they are no longer interested in maintaining the CVD order or in the imposition of CVD duties on the subject merchandise. Also, the parties to the litigation concerning these entries have agreed to withdraw their appeals.

Because the Department did not receive any comments in response to the *Initiation Notice* or the *Preliminary Results* opposing this changed circumstances review or the preliminary decision to revoke, in whole, the CVD order effective November 17, 1998, we find that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order. In accordance with sections 751(b), 751(d), and 782(h) of the Act and 19 CFR 351.216 and 351.222(g), the Department determines that there is a reasonable basis to find that changed circumstances exist sufficient to warrant revocation of the order. Therefore, the Department is revoking the CVD order on SSSS from Italy, in whole, with regard to the products described above under the ''Scope of the Order'' section.

Instructions to U.S. Customs and Border Protection

In accordance with 19 CFR 351.222(g), upon dismissal by the court of all pending appeals involving the subject merchandise as described above under the ''Scope of the Order'' section, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to countervailing duties, all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, *i.e.*, the publication date of the Department's *Preliminary Determination* in the underlying investigation. In accordance with section 778 of the Act, we will also instruct CBP to pay interest on and refunded CVD deposits with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 6, 1999, the date of publication in the **Federal Register** of the CVD order.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) 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. *See* 19 USC 1677f and 19 CFR Part 354.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: March 21, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–4485 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

The Exporters' Textile Advisory Committee (ETAC) will meet on May 24, 2006. The meeting will be held at 10 a.m at the U.S. Department of Commerce, Main Commerce Building, 1401 Constitution Avenue, NW., Washington, DC.

The Committee provides information on overseas requirements and regulations, works with U.S. companies to eliminate trade barriers, and promotes U.S. textile and apparel products overseas.

Tentative Agenda: Review of export data, report on conditions in the export market; update on FTA's; export expansion activities; U.S. Customs and Border Protection's ''Customs-Trade Partnership Against Terrorism'' Initiative, and other business.

The meeting will be open to the public with a limited number of seats available. For further information call Rachel Anne Alarid at (202) 482-5154. March 23, 2006.

Philip J. Martello,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E6–4487 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032106A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Scoping Process

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

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); notice of scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the summer flounder, scup, and black sea bass fisheries pursuant to

the Magnuson-Stevens Fishery Conservation and Management Act. The Council intends to develop Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) to address several issues regarding the subject fisheries (see **SUPPLEMENTARY INFORMATION**). This notice announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to the management of summer flounder, scup, and black sea bass. The intended effect of this notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation.

DATES: Written comments on the intent to prepare an EIS must be received on or before 5 p.m., local time, on June 30, 2006. Public scoping meetings will be held in April and May 2006. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the intent to prepare the EIS or other relevant information by any of the following methods:

- E-mail: *FSB-NOI@noaa.gov*. Include in the subject line the following identifier: ''FSB Amendment 15 Scoping Comments.''
- Mail: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. Mark the outside of the envelope: ''Comments on Summer Flounder, Scup, and Black Sea Bass Amendment 15.''
- Fax: (302) 674–5399.

Copies of the scoping document may be obtained from the Council at the address above or via the Internet at *http://www.mafmc.org/mid-atlantic/comments/comments.htm*.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, (302) 674–2331.

SUPPLEMENTARY INFORMATION: The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Council and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the Summer Flounder, Scup, and Black Sea Bass FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (Stenotomus chrysops) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The issues identified by the Council for discussion in Amendment 15 to the FMP include (further information regarding each issue follows):

- Modifications to the allocation of Total Allowable Landings (TAL) to the commercial and recreational fisheries for summer flounder and scup;
- Changes to the summer flounder, scup, and black sea bass commercial allocations;

Measures to reduce overcapacity in the summer flounder, scup, and black sea bass recreational and commercial fisheries;

- Modifications to the biological reference points for summer flounder, scup, and black sea bass;
- Separate allocations of quota to the party/charter sector of the recreational fishery for summer flounder, scup, and black sea bass;
- Separate allocations of quota to the shore-based fishermen in the recreational fishery for summer flounder, scup, and black sea bass;
- Measures to reduce discarding and/or discard mortality of summer flounder, scup, and black sea bass in the recreational and commercial fisheries;
- Modification to the reporting requirements for summer flounder, scup, and black sea bass through the vessel trip reporting, dealer weighout, and observer programs;
- Development of a conservation equivalency program for management of the recreational fishery for scup;
- Changes to the current management program for the summer flounder recreational fishery;
- Measures to allow the rollover of the unused portion of the TAL in the recreational and commercial fisheries for summer flounder, scup, and black sea bass, into the next fishing year; and
- Modifications to the limitations on vessel upgrades under moratorium permits for summer flounder, scup, and black sea bass.

Summer Flounder Commercial/Recreational Allocation

In 2003, NMFS received a petition that requested the current recreational/commercial allocation (which is 60 percent commercial and 40 percent recreational) be modified to provide 50 percent of the TAL to each sector. NMFS asked the Council and Commission to consider the petition. The Council considered this petition, recommended to NMFS that it be denied, and suggested that modifications to the summer flounder allocation could be considered in an amendment instead.

Summer Flounder Commercial Allocation

Currently, the commercial quota is allocated to each state based on historic landings from 1980 through 1989. State-by-state allocations were developed to allow each state the ability to develop specific management programs that were designed for the commercial fishery in their state. In recent years, fishermen from some states have expressed an interest in other options that could be used to allocate the quota, including an Individual Fishing Quota (IFQ) program.

Overcapacity in the Summer Flounder Commercial Fleet

A moratorium on Federal commercial permits and the state-by-state quota system have served to constrain effort in the commercial summer flounder fishery. However, the harvesting capacity may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fisheries, and negative impacts on habitat and protected resources.

Overcapacity in the Summer Flounder Recreational Fishery

The harvesting capacity of the summer flounder recreational fishery may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fishing, and overcrowding of popular fishing areas.

Summer Flounder Biological Reference Points

The current biological reference points for summer flounder that define overfishing (F_{msy}) and an overfished ($\frac{1}{2}$ B_{msy}) condition are based on yield-per-recruit calculations. Updated biological reference points were reviewed and accepted in June 2005 by a Stock Assessment Review Committee. There has been some interest in a reexamination of the reference points based on other methodologies and the use of stock recruit data.

Management of the Summer Flounder Party/Charter Fishery

A portion of the TAL could be allocated to the party/charter sector each year. Currently, fishermen fishing from party/charter boats are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to party/charter fishermen.

Management of the Summer Flounder Shore Fishery

A portion of the TAL could be allocated to fishermen fishing for

summer flounder from shore. Currently, fishermen fishing from the shore and shore-based structures (e.g., jetties and bridges) are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to shore-based fishermen.

Management of the Summer Flounder Recreational Fishery

The summer flounder recreational fishery is currently managed with a system that allows for the Council and Commission to decide if coastwide or state-by-state (conservation equivalency) regulations should apply each year. Recent action by the Council and Commission would also allow for states to voluntarily form subregions and develop identical regulations for the states in that subregion. Some fishermen have expressed an interest in exploring other management options for the summer flounder recreational fishery.

Summer Flounder Discards

The issue of regulatory discards in the commercial and recreational fisheries for summer flounder has been raised a number of times over the years. However, based on sea sample data, discard rates in the commercial fishery have been relatively low on a coastwide basis. Discard rates are higher for vessels that fish for other groundfish species in states with lower trip limits and for summer flounder caught by scallop dredges. In addition, 10 percent of the summer flounder caught and released by anglers are assumed to die in the recreational fishery.

Scup Commercial/Recreational Allocation

There have been recent discussions regarding the allocation of allowable catch to the commercial and recreational fisheries for scup. The current allocation is 78 percent commercial and 22 percent recreational. Issues include modification of the methodology to change catch allocations to landings allocations and the potential for transferring unused commercial quota to the recreational fishery on an annual basis.

Scup Commercial Allocation

Current regulations allocate the commercial scup quota to three periods based on historic landings: Winter I, Summer, and Winter II. The regulations also allow for unused quota to be transferred from the Winter I to the Winter II period. There has been some discussion at Commission Board and Council meetings to modify the allocations to each period and also allow for the transfer of quota from Winter I to the Summer period.

Overcapacity in the Scup Commercial Fleet

A moratorium on Federal commercial permits and the quota system have acted to constrain effort in the commercial scup fishery. However, the harvesting capacity may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fisheries, and negative impacts on habitat and protected resources.

Overcapacity in the Scup Recreational Fishery

The harvesting capacity of the scup recreational fishery may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fishing, and overcrowding of popular fishing areas.

Scup Biological Reference Points

The biological reference points for scup have not been reviewed or updated recently due to the lack of data. The current proxies are based on yield-per-recruit calculations to define overfishing and the NMFS Northeast Fisheries Science Center spring survey to define when the stock is overfished. There has been some interest in revising these reference points when data become available.

Management of the Scup Party/Charter Fishery

A portion of the TAL for scup could be allocated to the party/charter sector each year. Currently, fishermen fishing from party/charter boats are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to party/charter fishermen.

Management of the Scup Shore Fishery

A portion of the TAL could be allocated to fishermen fishing for scup from shore. Currently, fishermen fishing from the shore and shore-based structures are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to shore-based fishermen.

Management of the Scup Recreational Fishery

Unlike summer flounder, conservation equivalency has not been identified for scup. The Federal fishery management plan requires coastwide management measures that are identical for each state. However, the Commission has adopted addenda for the last several years that allow states to develop alternative management measures for state waters. Given this difference, there is some interest in developing a conservation equivalency approach that could be incorporated into both the Federal and state fishery management plans.

Scup Discards

The issue of regulatory discards in the commercial and recreational fisheries for scup has been raised a number of times over the years. However, discard rates in the commercial fishery have been difficult to quantify. In addition, 15 percent of the scup caught and released by anglers are assumed to die in the recreational fishery.

Black Sea Bass Commercial Allocation

Under the current regulations, the black sea bass quota is administered on a coastwide basis by NMFS to facilitate a state-by-state approach that is implemented by the Commission. The current state-by-state allocations are in effect through 2007. State-by-state allocations were developed to allow each state to develop specific management programs that were designed for the commercial fishery in their state. In recent years, fishermen from some states have expressed an interest in other options that could be used to allocate the quota, including an IFQ program.

Overcapacity in the Black Sea Bass Commercial Fleet

A moratorium on Federal commercial permits and the quota system have acted to constrain effort in the commercial black sea bass fishery. However, the harvesting capacity may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fisheries, and negative impacts on habitat and protected resources.

Overcapacity in the Black Sea Bass Recreational Fishery

The harvesting capacity of the black sea bass recreational fishery may exceed the optimum yield on an annual basis, resulting in regulatory discards, derby fishing, and overcrowding of popular fishing areas.

Black Sea Bass Biological Reference Points

The most recent assessment on black sea bass, completed in June 2004, updated the proxies used to define overfishing and an overfished condition for black sea bass. Additional data and associated analyses may result in

potential changes to those reference points.

Management of the Black Sea Bass Party/Charter Fishery

A portion of the TAL for black sea bass could be allocated to the party/charter sector each year. Currently, fishermen fishing from party/charter boats are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to party/charter fishermen.

Management of the Black Sea Bass Shore Fishery

A portion of the TAL could be allocated to the fishermen fishing for black sea bass from shore. Currently, fishermen fishing from the shore and shore-based structures are regulated by state regulations that apply to all recreational fishermen. A separate allocation could allow for the development of regulations that apply only to shore-based fishermen.

Black Sea Bass Discards

The issue of regulatory discards in the commercial and recreational fisheries for black sea bass has been raised a number of times over the years. However, discard rates have been difficult to quantify. In addition, about 25 percent of the black sea bass caught and released by anglers are assumed to die in the recreational fishery.

Data Collection Requirements and Protocols

To improve the information available for assessment of summer flounder, scup, and black sea bass, changes could be made to information required to be reported through the Vessel Trip Report, dealer weighout, and observer programs.

Rollover of Unused Quota

The unused portion of the TAL in the recreational and commercial fisheries for each of the species could be rolled into the next year's respective TAL.

Limitations on Vessel Replacement Upgrades

The current commercial permits for summer flounder, scup, and black sea bass allow for a one-time replacement/upgrade of 20 percent in horsepower and/or 10 percent in vessel length. Several individuals have indicated these restrictions may be unfair, particularly for small vessel owners. The Council could consider changes to these regulations.

Scoping Meetings Schedule

Ten public scoping meetings are scheduled as follows (note that NY meeting(s) to be determined):

1. Monday, April 3, 2006, 7 p.m.; Roanoke Island Festival Park, One Festival Park, Manteo, NC; Contact: Red Munden, (252) 726–7021.

2. Tuesday, April 4, 2006, 7 p.m.; Carteret Community College, CMAST Building, Room 306, Morehead City, NC; Contact: Red Munden, (252) 726–7021.

3. Tuesday, April 4, 2006, 7 p.m.; Virginia Marine Resources Commission, 2600 Washington Ave, 4th floor, Newport News, VA; Contact: Jack Travelstead, (757) 247–2247.

4. Monday, April 10, 2006, 6 p.m.; University of Rhode Island Narragansett Bay Campus, Corless Auditorium, South Ferry Road, Narragansett, RI; Contact: Brian Murphy, (401) 423–1941.

5. Monday, April 10, 6:30 p.m.; Ocean Pines Library, 11107 Cathell Road, Ocean Pines, MD; Contact: Howard J. King, III, (410) 260–8281.

6. Tuesday, April 11, 2006, 7 p.m.; Connecticut Department of Environmental Protection, Marine Headquarters, 333 Ferry Road, Old Lyme, CT; Contact: Dave Simpson, (860) 434–6043.

7. Tuesday, April 18, 2006, 7 p.m.; Ocean County Complex, 118 Washington Street; Toms River, NJ; Contact: Tom McCloy, (609) 292–7794.

8. Tuesday, April 18, 2006, 7 p.m.; Delaware Department of Natural Resources and Environmental Control, Richardson and Robbins Building Auditorium, 89 Kings Highway, Dover, DE; Contact: Rick Cole, (302) 739–4782.

9. Thursday, April 20, 2006, 6 p.m.; Radisson Plymouth Harbor, 180 Water Street, Plymouth, MA; Contact: David Pierce, (617) 626–1532.

10. Tuesday, May 2, 2006, 7 p.m.; Sheraton Oceanfront Hotel, 36th & Atlantic Avenue, Virginia Beach, VA; Contact: Dan Furlong, (302) 674–2331.

One or two public scoping meetings will be held in NY but have not yet been scheduled. Contact: Gordon Colvin, (631) 444–0433. This information will be posted on the Commission's website (*http://www.asmfc.org*) when available.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders, (302) 674–2331, at least 5 days prior to the meeting date.

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

Dated: March 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–4500 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031506C]

Marine Mammals; File No. 881–1745

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), P.O. Box 1329, Seward, Alaska 99664 (Dr. Shannon Atkinson, Principal Investigator), has been issued a permit to conduct scientific research on captive Steller sea lions (*Eumetopias jubatus*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427–2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 8, 2004, notice was published in the **Federal Register** (69 FR 10681) that a request for a scientific research permit to take the species identified above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The ASLC has been issued a 5–year permit to continue research on three permanently captive Steller sea lions. Research objectives include the investigation of stress responses, endocrine and immune system function,

and seasonal variations to normal biological parameters such as mass and body composition; and research and development of external tags and attachments for future deployment in the field.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 16, 2006.

Stephen L. Leathery

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4495 Filed 3–27–06; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of walk-behind power lawn mowers. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than May 30, 2006.

ADDRESSES: Written comments should be captioned ''Walk-Behind Power Lawn Mowers'' and sent by e-mail to *cpsc-os@cpsc.gov.* Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1205, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of amputations, avulsions, lacerations, and other serious injuries which have resulted from the accidental contact of some part of an operator's body with the rotating blade of a power lawn mower. The standard contains performance and labeling requirements for walk-behind power lawn mowers to address risks of blade-contact injuries.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power mowers. These regulations also require manufacturers, importers, and private labelers of walk-behind power mowers to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR part 1205, subpart B.

The Commission uses the information compiled and maintained by manufacturers and importers of walk-behind power mowers to protect consumers from risks of injuries associated with walk-behind power lawn mowers. More specifically, the Commission uses this information to determine whether the mowers produced and imported comply with the applicable standard. The Commission also uses this information to obtain corrective actions if walk-behind power mowers fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information requirements for walk-behind mowers under control number 3041–0091. OMB's most recent extension of approval will expire on June 30, 2006. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The Commission staff estimates that about 20 firms are subject to the testing and recordkeeping requirements of the certification regulations. The Commission staff estimates further that the annual testing and recordkeeping burden imposed by the regulations on each of these firms on average is approximately 390 hours. Thus, the total annual burden imposed by the certification regulations on all manufacturers and importers of walk-behind power mowers is about 7,800 hours.

The Commission staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $42.84 (Bureau of Labor Statistics, June 2005), and that the annual total cost to the industry is approximately $334,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 22, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–4475 Filed 3–27–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Migrant Education Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Years (FY) 2005 and 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.214A.

Dates: Applications Available: March 28, 2006. Deadline for Transmittal of Applications: May 12, 2006. Deadline for Intergovernmental Review: July 11, 2006.

Eligible Applicants: Any entity is eligible to apply for a grant under the Migrant Education Even Start (MEES) Family Literacy Program. For example, the following types of entities are eligible to apply: State educational agencies (SEAs) that administer migrant education programs; local educational agencies (LEAs) that have a high percentage of migratory students; nonprofit community-based organizations that work with migratory agricultural or fishing families; and faith-based organizations.

Estimated Available Funds: $3,450,000. This is the combined estimate from both FY 2005 and FY 2006 funds. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$500,000 per year.

Estimated Average Size of Awards: $345,000 per year.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: MEES Family Literacy program grants are intended to help break the cycle of poverty and illiteracy of migratory agricultural or fishing families by improving the educational opportunities of these families through the integration of early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program. This program is implemented through cooperative activities that build on high-quality existing community resources to create a new range of educational services for most-in-need migratory agricultural or fishing families; promote the academic achievement of migratory children and adults; assist migratory children and adults from low-income families in achieving challenging State content standards and challenging State student achievement standards; and use instructional programs based on scientifically based reading research on preventing and overcoming reading difficulties for children and adults. The application package contains a description of the 15 program elements that MEES projects must provide, as required under Title I, Part B, Section 1235 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Priorities: This notice includes one competitive preference priority and two invitational priorities.

Competitive Preference Priority: For the FY 2006 competition and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is a competitive preference priority. In accordance with 34 CFR 75.105, this priority is from the Education Department General Administrative Regulations (EDGAR) that apply to this program (34 CFR 75.225). Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets this competitive preference priority.

This Priority Is: Novice Applicant

The applicant must be a ''novice applicant.'' Under 34 CFR 75.225 a novice applicant is an applicant that has never received a grant or subgrant under the MEES program; has never been a participant in a group application, submitted in accordance with §§ 75.127 through 75.129 of EDGAR, that received a grant under the MEES program; and has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the MEES program.

Invitational Priorities: For the FY 2006 competition and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These Priorities Are: Invitational Priority 1—Partnerships to Improve School Readiness

The Secretary is especially interested in applications for projects that would develop collaborative efforts and partnerships that leverage Federal, State, and local funding in order to improve reading proficiency and advance English language acquisition so that migratory children enter elementary school with strong early reading skills.

Invitational Priority 2—Collaboration With Experienced MEES Projects

The Secretary is especially interested in applications that would build networks among novice applicants and experienced MEES projects in order to eliminate disruptions in the education of participating families and engage migrant agricultural or fishing families wherever they move outside the area in which the project operates. Networks among experienced and novice projects increase the likelihood of maintaining the academic progress of migratory adults and children regardless of where migratory families travel to perform qualifying agricultural or fishing work.

Program Authority: 20 U.S.C. 6381a(a)(1)(A).

Applicable Regulations: EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,450,000. This is the combined estimate from both FY 2005 and FY 2006 funds. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2007 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000—$500,000 per year.

Estimated Average Size of Awards: $345,000 per year.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any entity is eligible to apply for a grant under the MEES Family Literacy Program. For example, the following types of entities are eligible to apply: SEAs that administer migrant education programs; LEAs that have a high percentage of migratory students; nonprofit community-based organizations that work with migratory agricultural or fishing families; and faith-based organizations.

2. *Cost Sharing or Matching:* See ESEA section 1234(b). Matching requirements for the MEES program begin at 10 percent of the total cost of the project in the project's first year and increase incrementally as the project continues to receive Federal support. A project funded for a second cycle, years 5 through 8, must maintain a 50 percent cost share of the total cost of the project. A project funded for cycles beginning in year 9 must maintain a 65 percent cost share of the total cost of the project.

3. *Other:* Eligible MEES participants consist of migratory children and their parents who meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in 34 CFR 200.81 and who also meet the conditions specified in section 1236(a) of the ESEA.

IV: Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.214A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page, Appendices, and Other Limits: (1) The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. In addition, the budget narrative is where you provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B of Budget Form 524. You are encouraged to limit your application narrative (Part III of the application) to the equivalent of no more than 25 pages and limit the additional budget narrative to the equivalent of no more than 4 typed pages. Use the following standards for both the application and budget narratives:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. However, you may single space information in tables, charts, or graphs in the application and budget narratives and appendices.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, and graphs, but those tables, charts, and graphs should be in a font size that is easily readable by the reviewers of your application.
- Any application or budget narrative, table, chart, or graph is included in the over-all narrative page limit. The appendices are not part of these page limits.

(2) You are encouraged to limit the appendices, curriculum vitae, or position descriptions of no more than five people (including key contract personnel and consultants), and endnote citations to no more than two pages for the scientifically based reading research upon which your instructional programs are based.

(3) Additionally, please limit other application materials to the specific materials indicated in the application package and do not include any video or other non-print materials.

3. *Submission Dates and Times:* Applications Available: March 28, 2006. Deadline for Transmittal of Applications: May 12, 2006.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: July 11, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Recipients of a MEES Family Literacy program grant may not use funds awarded under this competition for the indirect costs of a project or claim indirect costs as part of the local project share. (ESEA section 1234(b)(3)) We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2006. The MEES Family Literacy Program—CFDA Number 84.214A is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the MEES Family Literacy Program at: *http://*

www.grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submissions Procedures pertaining to Grants.gov at *http://e-grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit an application successfully via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to register fully to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.214A), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.214A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.214A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are in 34 CFR 75.210. The selection criteria are included in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs in order to assess their performance and effectiveness. The Department has established a set of indicators to assess the effectiveness of the Even Start program. The MEES Family Literacy projects will use these indicators to measure increases in the (1) Percentage of adults showing significant learning gains on measures of reading; (2) percentage of limited English proficient (LEP) adults showing significant learning gains on measures of English language acquisition; (3) percentage of school-age adults who earn a high school diploma or GED; (4) percentage of non-school-age adults who earn a high school diploma or GED; (5) percentage of children entering kindergarten who are achieving significant learning gains on measures of language development; (6) the average number of letters children can identify as measured by the PALS Pre-K Uppercase Letter Naming Subtask; (7) percentage of school-age children who are reading on grade level; and (8) percentage of parents who show improvement on measures of parental support for children's learning in the home, school environment, and through interactive learning activities.

All grantees will be expected to submit, as part of an annual performance report, information documenting their progress with regard to these performance measures.

VII. Agency Contact

For Further Information Contact: DonnaMarie Marlow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E313, Washington, DC 20202–6135. Telephone: (202) 260–2815 or by e-mail: *DonnaMarie.Marlow@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 22, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–4435 Filed 3–27–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Territories and Freely Associated States Education Grant (T&FASEG) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.256A.

Dates:

Applications Available: March 28, 2006.

Deadline for Transmittal of Applications: May 12, 2006.

Deadline for Intergovernmental Review: July 12, 2006.

Eligible Applicants: Only local educational agencies (LEAs) in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the Republic of Palau.

Estimated Available Funds: $4,750,000.

Estimated Range of Awards: $650,000–1,500,000.

Estimated Average Size of Awards: $792,000.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Territories and Freely Associated States Education grants support projects to raise student achievement through direct educational services. Grants are awarded to LEAs in the U.S. Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands) and the Republic of Palau. The LEA may use grant funds to carry out activities authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), including teacher training, curriculum development, development or acquisition of instructional materials, and general school improvement and reform.

Under the T&FASEG program, the Secretary awards grants for projects to—

(a) Conduct activities consistent with the purposes of the ESEA, as amended by NCLB, including the types of activities authorized by these ESEA titles—

(1) Title I—Improving the Academic Achievement of the Disadvantaged.

(2) Title II—Preparing, Training, and Recruiting High-quality Teachers and Principals.

(3) Title III—Language Instruction for Limited English Proficient and Immigrant Students.

(4) Title IV—21st Century Schools.

(5) Title V—Promoting Informed Parental Choice and Innovative Programs.

(b) Provide direct educational services that assist all students with meeting challenging State academic achievement standards.

Note: The Secretary interprets the term direct educational services to—

(1) Mean activities that are designed to improve student achievement or the quality of education; and

(2) Include instructional services for students and teacher training.

Note: The full text of the ESEA, as amended by NCLB, may be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/.*

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Reading Literacy: The Secretary is particularly interested in receiving applications that focus on building early reading literacy skills that will help to improve student achievement in reading and language performance as measured by State academic standards. Research shows that children who read well in the early grades are far more successful in later years, and those who fall behind often stay behind when it comes to academic achievement (Snow, Burns, and Griffin 1998). Reading opens the door to learning about math, history, science, literature, geography, and much more. Thus, young, capable readers can succeed in these subjects, take advantage of other opportunities, and develop confidence in their own abilities. On the other hand, those students who cannot read well are much more likely to drop out of school and be limited to low-paying jobs throughout their lives. Reading is undeniably critical to success in today's society. The Secretary encourages applicants to align their projects with the performance measures described in section VI. 4. *Performance Measures of this notice.*

Invitational Priority 2—Teacher Quality: The Secretary is particularly interested in LEA projects that focus on professional development and teacher training that improve teacher qualifications and the quality of teaching and instruction. A major objective of NCLB is to ensure that all students, regardless of race, ethnicity, or income, have the best teachers possible. A well-prepared teacher is vitally important to a child's education. In fact, research demonstrates the clear correlation between student academic achievement and teacher quality (Whitehurst, G. 2002). The Secretary encourages applicants to align their projects with the performance measures described in section VI. 4. of this notice.

Program Authority: 20 U.S.C. 6331.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,750,000.

Estimated Range of Awards: $650,000–$1,500,000.

Estimated Average Size of Awards: $792,000.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Only LEAs in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the Republic of Palau.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain the application package electronically by downloading it from the Territories and Freely Associated States Education Program Web site: *http://www.ed.gov/programs/tfasegp/applicant.html.*

You may also request an application package by contacting Valerie Rogers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E245, Washington, DC 20202–6400. Telephone 202–260–2543 or by e-mail: *Valerie.Rogers@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed above in this section of the notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The project narrative (Section D of the application package) is where you, the applicant, address the selection criteria that the reviewers will use to evaluate your application. Applicants are strongly encouraged to limit the project narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of no more than 35 single-sided pages, using the following standards:

A ''page'' is 8.5 x 11, on one side only, with 1″ margins at the top, bottom, and both sides.

Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations,

references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is 12 point or larger. The page limit does not apply to the cover sheet; required standard forms, budget section, including the budget justification narrative; assurances and certifications; one-page abstract; endnotes; or resumes. However, you must include all of the application narrative in the narrative section. Appendices to the narrative are not permitted.

3. *Submission Dates and Times:*

Applications Available: March 28, 2006.

Deadline for Transmittal of Applications: May 12, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov) or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

The Department does not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 12, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2006. The T&FASEG program-CFDA Number 84.256A is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the T&FASEG program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If

you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.256A, 400 Maryland Avenue, SW., Washington, DC 20202–4260 or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA Number 84.256A, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: 84.256A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria are from 34 CFR 75.209–75.210. The maximum possible score for this competition is 100 points.

As provided for in the ESEA, as amended by NCLB, the Secretary, in making awards under this program, will take into consideration the recommendations of Pacific Resources for Education and Learning (PREL). PREL will use the following criteria in developing its recommendations, and the Secretary will use them in making final funding decisions. The Notes following the selection criteria are meant to serve as guidance to assist the applicant in creating a stronger application, and are not required by statute or regulation.

(a) *Need for Project.* (5 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide services or otherwise address the needs of students who are at risk of educational failure.

Note: In meeting this criterion, the Secretary encourages the applicant to clearly demonstrate unique needs and circumstances that justify funding support for this project. The Secretary also encourages the applicant to demonstrate the extent to which local resources are used to meet the needs addressed by the project proposal.

(b) *Significance.* (10 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project.

(ii) The significance of the problem or issue to be addressed by the proposed project.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the Project Design.* (25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iv) The extent to which the proposed project is part of a comprehensive effort

to improve teaching and learning and support rigorous academic standards for students.

(v) The extent to which the proposed project encourages parental involvement.

(vi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(d) *Adequacy of Resources.* (5 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(e) *Quality of project personnel.* (15 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project. (2) In determining the quality of the personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

Note: In meeting this criterion, the Secretary encourages the applicant to attach curricula vitae, résumés, etc., of key project personnel.

(f) *Quality of the project evaluation.* (25 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: In meeting this criterion, the Secretary encourages the applicant to align its evaluation with the performance measures described in section VI.4 of this notice.

(g) *Quality of project services.* (15 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(iv) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Department has developed two performances measures for evaluating the effectiveness of the T&FASEG program—(1) The percentage of students who participate in reading programs under the T&FASEG program reading at or above grade level on State assessments; and (2) The percentage of teachers who participate in professional development activities under the T&FASEG program meeting State teacher certification standards.

All grantees must submit an annual performance report addressing these performance measures, to the extent that they apply to the grantee's project.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Valerie Rogers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E245, Washington, DC 20202–6140. Telephone: (202) 260–2543 or by e-mail: *Valerie.Rogers@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request from the contact person listed in this section.

VIII. Other Information

Electronic Access to this Document. You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news.fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 23, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–4498 Filed 3–27–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years the information collection packages listed at the end of this notice. Comments are invited on: (a) Whether the extended information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before April 27, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290, or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection packages listed in this notice for public comment include the following:

1. (1) *OMB No.:* 1910–0300. (2) *Package Title:* Environment, Safety and Health. (3) *Type of Review:* Renewal. (4) *Purpose:* This information is required to ensure that environment, safety, and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. (5) *Respondents:* 111,038. (6) *Estimated Number of Burden Hours:* 195,000.

2. (1) *OMB No.:* 1910–5101. (2) *Package Title: U.S. Dept. of Energy:* Annual Alternative Fuel Vehicle Acquisition Report for State Government & Alternative Fuel Provider Fleets. (3) *Type of Review:* Renewal. (4) *Purpose:* This collection is critical to ensure the Government has sufficient information to ensure that covered fleets are complying with annual reporting and acquisition requirements under the Alternative Fuel Transportation Program. (5) *Respondents:* 317. (6) *Estimated Number of Burden Hours:* 1,585.

3. (1) *OMB No.:* 1910–5111. (2) *Package Title:* Purchasing by DOE Management and Operating Contractors from Contractor Affiliated Sources. (3) *Type of Review:* Renewal. (4) *Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively. The package contains one information and/or recordkeeping requirement, that is, the provision found at 48 CFR 952.209–8, Organizational Conflicts of Interest Disclosure—Advisory and Assistance Services. (5) *Respondents:* 20. (6) *Estimated Number of Burden Hours:* 100.

4. (1) *OMB No.:* 1910–5121. (2) *Package Title:* End-Use Certificate. (3) *Type of Review:* Renewal. (4) *Purpose:* This information is required to determine the acceptability of the individual(s) acquiring High Risk personal property; inform buyers of the laws and regulations governing the use, disposition, export and re-export of High Risk property and ensure that the property is used as stipulated in the End-Use Certificate. (5) *Respondents:* 5,000. (6) *Estimated Number of Burden Hours:* 1,650.

5. (1) *OMB No.:* 1910–0500. (2) *Package Title:* Financial Management. (3) *Type of Review:* Renewal. (4) *Purpose:* This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. (5) *Respondents:* 12,626. (6) *Estimated Burden Hours:* 152,704.

6. (1) *OMB No.:* 1910–0400; (2) *Package Title:* Financial Assistance (3) *Type of Review:* Renewal. (4) *Purpose:* This package contains information collections necessary for the solicitation, award, administration, and closeout of grants and cooperative agreements (5) *Estimated Number of Respondents:* 26,902 (6) *Estimated Total Burden Hours:* 339,792.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC on March 21, 2006.

Jeffrey D. Martus,

Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–4489 Filed 3–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995 intends to extend for three years, an information collection package with the Office of Management and Budget (OMB) concerning the Human Reliability Program (HRP), OMB Control Number 1910–5122. The collections consist of forms that will certify to DOE that respondents were advised of the requirements for occupying or continuing to occupy a HRP position. The HRP is a security and safety reliability program for individuals who apply for or occupy certain positions that are critical to the national security. It requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. It is also used to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical

conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

DATES: Comments regarding this proposed information collection must be received on or before May 30, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Kathy Murphy, SP–1.22 Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, or by fax at 301–903–6081 or by e-mail at *Kathy.murphy@hq.doe.gov* and to:

Sharon A. Evelin, Director, IM–11/ Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, or by fax at 301–903–9061 or by e-mail at *sharon.evelin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kathy Murphy at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.:* 1910–5122; (2) *Package Title:* Human Reliability Program; (3) *Type of Review:* renewal; (4) *Purpose:* for DOE management to ensure that individuals who occupy HRP positions meet program standards of reliability and physical and mental suitability; (5) *Respondents:* 11,500; (6) *Estimated Number of Burden Hours:* 5,750.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Issued in Washington, DC, on March 21, 2006.

Jeffrey D. Martus,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–4490 Filed 3–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years the information collection packages listed at the end of this notice. Comments are invited on: (a) Whether the extended information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget review and approval of these information collections; they also will become a matter of public record.

DATES: Comments regarding these proposed information collections must be received on or before May 30, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Jeffrey Martus, IM–11/ Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection packages listed in this notice for public comment include the following:

1. (1) *OMB No.:* 1910–1000. (2) *Package Title:* Personal Property. (3) *Type of Review:* Renewal. (4) *Purpose:* This information collection provides the Department with the information necessary for the management, control, reutilization, and disposal of government personal property. (5) *Respondents:* 111. (6) *Estimated Number of Burden Hours:* 1,880.

2. (1) *OMB No.:* 1910–5112. (2) *Package Title:* Chronic Beryllium Disease Prevention Program. (3) *Type of Review:* Renewal. (4) *Purpose:* This information is used by DOE and DOE contractor employers to manage chronic beryllium disease prevention programs, to provide information to employees, and to permit oversight of their programs by DOE management. (5) *Respondents:* 1, 703. (6) *Estimated Burden Hours:* 32,952.

3. (1) *OMB No.:* 1910–5103. (2) *Package Title:* Reporting and Recordkeeping Requirements for Safety Management System. (3) *Type of Review:* Renewal. (4) *Purpose:* This collection is required by the Department to ensure that the management and operating contractors are performing work safely at DOE facilities. (5) *Respondents:* 7. (6) *Estimated Number of Burden Hours:* 2,450.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC, on March 21, 2006.

Jeffrey D. Martus,

Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–4491 Filed 3–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetland Actions: Site Selection for Expansion of the Strategic Petroleum Reserve Announcement

AGENCY: Department of Energy.

ACTION: Notice of Proposed Floodplain and Wetland Actions.

SUMMARY: The Department of Energy (DOE) is preparing an environmental impact statement (EIS) for site selection for expansion of the Strategic Petroleum Reserve, as required by the Energy Policy Act of 2005. Some potential sites for expansion or new development of the Reserve and for pipeline rights-of-way are located in floodplains or

wetlands. DOE hereby gives early notice that it will include in the Draft EIS a floodplain and wetland assessment prepared in accordance with the DOE Regulations for Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022) and provides for early public input.

DATES: DOE intends to issue the Draft EIS containing the floodplain and wetland assessment in the near future. Any suggestions related to preparation of the floodplain and wetland assessment would be most helpful if received no later than April 12, 2006.

ADDRESSES: Suggestions or questions may be submitted by any of the following methods, identified by ''Notice of Floodplain and Wetland Actions for the SPR EIS'' on the subject line, cover sheet, or envelope, respectively:

- E-mail: *Donald.Silawsky@hq.doe.gov.*
- Fax: (202) 586–4446.
- Mail: Donald Silawsky, Office of Petroleum Reserves (FE–47), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0301. Please note that mail may be delayed by anthrax screening.

FOR FURTHER INFORMATION, CONTACT: To receive information on the proposed expansion of the SPR or the floodplain and wetland assessments, or to request a copy of the Draft EIS when it is issued, contact Donald Silawsky by any of the means listed in the **ADDRESSES** section of this notice, or call (202) 586–1892. Additional information may also be found on the DOE Fossil Energy Web site for ''EIS Information for Expanding the Nation's Strategic Petroleum Reserves'' at *http://www.fe.doe.gov/programs/reserves/spr/expansion-eis.html.*

For further information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: (202) 586–4600; fax: (202) 586–7031; or leave a toll-free message at: (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background: DOE published a notice of intent to prepare an EIS for site selection for the expansion of the Strategic Petroleum Reserve at 70 FR 52088 on September 1, 2005. In response to conditions following Hurricane Katrina, DOE extended the scoping period through October 28, 2005 (70 FR 56649; September 28, 2005) and held public scoping meetings in Texas, Mississippi, and Louisiana. On October 27, 2005, the Governor of Mississippi requested the Secretary of Energy to include a new site at Bruinsburg Salt Dome in the analysis of environmental impacts. On November 22, 2005 (70 FR 70600), in response to the inclusion of the new site, DOE announced that another public meeting would be held in Mississippi on December 7, 2005, and the public scoping period would be reopened until December 19, 2005.

Locations of Potential Actions in Wetlands and Floodplains

Construction and Operation of Reserves. Candidate sites for expansion of existing Strategic Petroleum Reserve storage capacity are at West Hackberry and Bayou Choctaw, Louisiana, and Big Hill, Texas. Candidate sites for construction of new Strategic Petroleum Reserve storage capacity are at Chacahoula and Clovelly, Louisiana; Richton and Bruinsburg, Mississippi; and Stratton Ridge, Texas. The expansion sites and the candidate construction sites all involve potential actions in floodplains and/or wetlands.

Petroleum Pipelines. The candidate Big Hill, Bayou Choctaw, and West Hackberry expansion sites and the new candidate Chacahoula, Clovelly, Richton, Bruinsburg, and Stratton Ridge sites involve potential construction of crude oil or product pipelines in floodplains and/or wetlands.

Brine Pipelines. The candidate Big Hill and Bayou Choctaw expansion sites and the new candidate Chacahoula, Richton, Bruinsburg, and Stratton Ridge sites involve potential construction of brine pipelines in floodplains and/or wetlands.

Issued in Washington, DC, on March 21, 2006.

Mark J. Matarrese,

NEPA Compliance Officer, Office of Fossil Energy.

[FR Doc. E6–4492 Filed 3–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC06–505–000; FERC–505]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

March 21, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due May 21, 2006.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filing/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC06–505–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–505 ''Application for License for Water Projects with less than 5MW capacity'' (OMB No. 1902–0115) is used by the Commission to implement the statutory provisions of Part I of the Federal Power Act (FPA), 16 U.S.C. sections 791a *et seq.* & 3301–3432, as amended by the Electric Consumers Protections Act (ECPA)

(Pub. L. 99–495, 100 Stat. 1234 (1986). The FPA as amended by ECPA provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric power plants, plus requiring the Commission in its licensing activities to give equal consideration to preserving environmental quality. ECPA also amended sections 10(a) and 10(j) of the FPA to specify the conditions on which hydropower licenses are issued, to direct that the project be adopted in accordance with a comprehensive plan that improves waterways for interstate/foreign commerce and for the protection, enhancement and mitigation of damages to fish and wildlife.

Submission of the information is necessary to fulfill the requirements of Sections 9 and 10(a) of the Act in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Under section 405(c) of the Public Utilities Regulatory Policies Act of 1978, the Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements of Part I of the FPA to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less. The information collected under designation FERC–505 is in the form of a written application for a license and is used by Commission staff to determine the broad impact of the license application.

In Order No. 2002 (68 FR 51070, August 25, 2003; FERC Statutes and Regulations ¶ 31,150 at p. 30,688) the Commission revised in regulations to create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) are conducted concurrently rather than sequentially. The Commission estimated that if an applicant chooses to use the new licensing process, this could result in a reduction of 30% from the traditional licensing process. The reporting burden related to Order No. 2002 would on average be 7,000 hours per respondent as opposed to 10,000 hours per respondent in the traditional licensing process and 8,600 hours in the alternative licensing process. It has been nearly three years since Order No. 2002 was issued and applicants have experienced the opportunity to gain the benefits from the revised licensing process. In particular, applicants have benefited from (a) increased public participation in pre-filing consultation; (b) increased assistance from Commission staff to the potential applicant and stakeholders during the development of a license application; (c) development by the potential applicant of a Commission-approved study plan; (d) elimination of the need for post-application study requests; (e) issuance of public schedules and enforcement of deadlines, (f) better coordination between the Commission's processes, including the NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses. It is for these reasons, that the Commission will use the estimates projected in the table below.

The information collected is needed to evaluate the license application pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), to consider the comprehensive development analysis certain factors with respect to new license set forth in section 15, and to comply with NEPA, Endangered Species Act (16 U.S.C. 531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.61; 4.71; 4.93; 4.107; 4.108; 4.201; 4.202, 292.203 and 292.208.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
5	1	6,959*	34,795

* Rounded off.

Estimated cost burden to respondents is $ 8,675,000. ($1,500,000 (traditional process) + $2,975,000 (alternative process) + $4,200,000 (integrated process). These costs were determined by the percentage of applicants that would be using each of these processes. Annualized costs per project $500,000 (traditional); $425,000 (alternative licensing), and $350,000 (integrated licensing).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities, which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4460 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–93–000]

ANR Pipeline Company; Notice of Application

March 21, 2006.

Take notice that on March 15, 2006, ANR Pipeline Company (ANR) filed an application pursuant to section 7 of the Natural Gas Act (NGA) for authorization to abandon three injection/withdrawal wells, Frackelton-Sherwood 21, Lincoln 109, and Lincoln 123, located in the Lincoln-Freeman Storage Field in Clare County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Dawn McGuire, Counsel, ANR Pipeline Company, 1001 Louisiana, Houston, Texas 77002 at (713) 420–5503.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on April 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4458 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–139]

ANR Pipeline Company; Notice of Negotiated Rate Filing

March 21, 2006.

Take notice that on March 17, 2006, ANR Pipeline Company (ANR) tendered for filing and approval ten amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas LLC and fourteen amendments to existing negotiated rate service agreements between ANR and Wisconsin Electric Power Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4470 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–025]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Filing

March 21, 2006.

Take notice that on March 17, 2006, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Vol. No. 1, Second Revised Sheet No. 10D, to be effective March 31, 2006.

CEGT states that the purpose of this filing is to revise the tariff sheet to reflect a change in Customer name due to a permitted assignment. The change reflects the sale of assets from Aquila Merchant Services, Inc., formerly known as Aquila Energy Marketing Corporation, to Union Electric Company, d/b/a AmerenUE.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4466 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–028]

Colorado Interstate Gas Company; Notice of Negotiated Rates

March 21, 2006.

Take notice that on March 17, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective April 17, 2006:

Second Revised Sheet No. 11B
Second Revised Sheet No. 11C
Second Revised Sheet No. 11D
Third Revised Sheet No. 11H
Third Revised Sheet No. 11J
First Revised Sheet No. 11M
First Revised Sheet No. 11N
Second Revised Sheet No. 11O
Second Revised Sheet No. 11P
First Revised Sheet No. 11Q

CIG states that copies of its filing have been served 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*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4468 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–194–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

March 21, 2006.

Take notice that on March 16, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 167 and Fourth Revised Sheet No. 168, with a proposed effective date of February 1, 2006.

Columbia states that the filing is being made in compliance with the Commission's Letter Order issued on March 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4467 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–004]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Compliance Filing

March 22, 2006.

Take notice that on February 28, 2006, Enbridge Pipelines (Louisiana Intrastate) LLC filed its annual revision of the fuel percentage on its system pursuant to Section 3.2 of its Statement of Operating Conditions. Louisiana Intrastate seeks an effective date of April 1, 2006.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4453 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–2–000]

Entergy Services, Inc.; Notice of Institution of Proceeding and Refund Effective Date

March 23, 2006.

On October 14, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL06–2–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the justness and reasonableness of Entergy Service, Inc.'s proposed reactive power rate. *Entergy Services, Inc.,* 113 FERC ¶ 61,040 (2005).

The refund effective date in Docket No. EL06–2–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4448 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–58–000]

FirstEnergy Corp.; Notice of Filing

March 21, 2006.

Take notice that on March 9, 2006, FirstEnergy Corp. submitted a petition for declaratory order requesting a finding by the Commission that the payment of dividends out of paid-in-capital by the FirstEnergy Operating Companies, subject to conditions and limitation proposed herein, will not violate section 305(a) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4459 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–086]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

March 21, 2006.

Take notice that on March 17, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective March 18, 2006:

Eighth Revised Sheet No. 24
Original Sheet No. 29A

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4456 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–116]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

March 21, 2006.

Take notice that on March 16, 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 be effective April 15, 2006.

Fifth Revised Sheet No. 26A.03
Fourth Revised Sheet No. 26A.04
Fourth Revised Sheet No. 26A.05

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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4469 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–89–000; Docket Nos. CP06–90–000, CP06–91–000, and CP06–92–000]

Northern Natural Gas Company; WTG Hugoton, LP; Notice of Applications

March 22, 2006.

Take notice that on March 15, 2006, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP06–89–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations, for permission and approval to abandon by sale various natural gas pipeline facilities, referred to as the West Hugoton facilities, located in various Kansas and Oklahoma counties, to WTG Hugoton, LP (WTG), 211 North Colorado, Midland Texas 79701. On the same date, WTG filed an application, in Docket No. CP06–90–000, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity to acquire, own, and operate the West Hugoton facilities. WTG also requests, in Docket Nos. CP06–91–000 and CP06–92–000, respectively, issuance of a blanket certificates pursuant to subpart F of part 157 and subpart G of part 284 of the Commission's regulations. Northern's and WTG's applications are on file with the Commission and open to public inspection. These filings may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions (call 202–502–8222 or for TTY, 202–502–8659).

Specifically, Northern proposes to abandon by sale to WTG approximately 264 miles of 3-inch to 26-inch diameter pipeline and related compression, delivery and receipt points and appurtenant facilities in Morton, Stevens, Grant, Kearny, Finney, Seward, and Haskell Counties in Kansas, and Texas County in Oklahoma for a price of approximately $24 million. Northern also proposes to establish a new Rate Schedule CS–1 to provide stand-alone compression service, at an incremental rate, that is needed for WTG to continue to make deliveries on the Liberal Lateral portion of the West Hugoton facilities in accordance with the terms of Northern's existing firm service agreements. Neither Northern nor WTG are requesting authorization to construct or remove any facilities. Upon

certification, WTG will be a new, open access interstate pipeline company. WTG states that it will continue to provide firm and interruptible service to all shippers currently served by Northern through the West Hugoton facilities. WTG requests issuance of an order by September 30, 2006.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103, or Richard Hatchet at 211 North Colorado, Midland, Texas 79701, at (432)682–4349 or by fax at (432)682–4024 or by e-mail to *rhatchett@westtexasgas.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on April 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4454 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–88–000]

Texas Gas Transmission, LLC; Notice of Application

March 21, 2006.

Take notice that on March 13, 2006, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to abandon, by sale to Hydro Gulf of Mexico, L.L.C., certain supply lateral facilities and appurtenances consisting of approximately 12.4 miles of 16-inch pipeline located in the West Cameron area, offshore Louisiana. Texas Gas requests a Commission determination that following abandonment, the facilities will be non-jurisdictional gathering facilities pursuant to section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any initial questions regarding this application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, P.O. Box 20008, Owensboro, Kentucky 42304 at (270) 688–6825, or by fax at (270) 688–5871.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentor will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on April 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4457 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–61–000]

Associated Electric Cooperative, Inc., Complainant v. Southwest Power Pool, Inc., Respondent; Notice of Complaint

March 22, 2006.

Take notice that on March 21, 2006, Associated Electric Cooperative, Inc. (Associated Electric) filed a Complaint against Southwest Power Pool, Inc. (SPP), pursuant to section 206 of the Federal Power Act, alleging that SPP violated its OATT by impermissibly granting a request by American Electric Power Service Corporation, as agent for the subsidiaries of the American Electric Power Company, Inc. d/b/a/ AEPM, for 250 megawatts of long-term firm point-to-point transmission service from the Union Electric Company d/b/a AmerenUE system to the Central and South West Services, Inc. system without determining whether there was Available Flowgate Capacity on the SPP transmission system and neighboring transmission system.

Associated Electric certifies that copies of the complaint were served on the contacts for SPP as well as AEPM as listed on the Commission's Corporate Officials 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4450 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 21, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–499–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an amendment to its 1/18/06 filing of revisions to the PJM Open Access Transmission Tariff.

Filed Date: 03/14/2006.

Accession Number: 20060317–0284.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–542–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co amends its 1/25/06 filing to reflect subsequent change in the Commission's regulations.

Filed Date: 03/14/2006.

Accession Number: 20060317–0285.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–700–001.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits clarifications and corrections to their March 2006 Credit Policy Amendments.

Filed Date: 03/14/2006.

Accession Number: 20060317–0273.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–726–000.

Applicants: Madison Windpower, LLC.

Description: Madison Windpower LLC petitions the Commission for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.

Filed Date: 03/14/2006.

Accession Number: 20060317–0274.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–727–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an unexecuted service agreement for Point-to-Point Transmission Service with Calpine Energy Services LP, effective 2/15/06.

Filed Date: 03/14/2006.

Accession Number: 20060317–0275.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–728–000.

Applicants: Mirant Potrero LLC.

Description: Mirant Potrero LLC submits revisions to its must Must-Run Service Agreement with the California Independent System Operator Corp.

Filed Date: 03/14/2006.

Accession Number: 20060317–0276.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–729–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff.

Filed Date: 03/14/2006.

Accession Number: 20060317–0277.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–730–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume.

Filed Date: 03/14/2006.

Accession Number: 20060317–0278.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 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 email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4455 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–34–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Leidy to Long Island Expansion Project

March 21, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of three 42-inch-diameter pipeline loops totaling 13.4 miles (two in Pennsylvania and one in New Jersey); replacement of 1.7 miles of 42-inch-diameter pipeline (consisting of five separate sections) in New Jersey; a new compressor station in New Jersey; and uprate of a portion of Transco's Lower New York Bay Mainline C pipeline in New Jersey and Transco's Lower New York Bay Extension in New Jersey and New York. Transco states that the purpose of the project would be to provide 100 million cubic feet per day of primary firm capacity to KeySpan Energy Delivery (KeySpan). The project is fully subscribed by KeySpan with a primary term of 20 years to deliver the proposed volumes at KeySpan's existing Long Beach Meter Facilities. KeySpan anticipates a 2.5 to 3.0 percent annual growth rate in the demand of their firm gas customers and their subscription to the project would help meet the growing demand for natural gas within KeySpan's service territory in Nassau and Suffolk Counties, New York, and the New York City boroughs of Brooklyn and Queens.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local agencies; public interest groups; individuals who have requested the EA; libraries; newspapers; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. 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 comments 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 the Gas Branch 3, PJ11.3;
- Reference Docket No. CP06–34–000; and
- Mail your comments so that they will be received in Washington, DC, on or before April 20, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

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 comments considered.

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*)

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4471 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2978–005, 2979–006, and 2980–007—Michigan]

Traverse City Light & Power; Notice of Availability of Environment Assessment

March 21, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, the Office of Energy Projects has reviewed the application requesting the Commission's authorization to surrender the license for the Brown Bridge Project (FERC Project No. 2978) and exemptions for the Boardman Dam Project (FERC Project No. 2979) and the Sabin Dam Project (FERC Project No. 2980). These projects are located on the Boardman River in Grand Traverse County, Michigan. An environmental assessment (EA) has been prepared.

In the EA, the Commission's staff concludes that approval of the subject surrender of license and exemptions would not produce any significant adverse environmental impacts, consequently the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Approving Conditional Surrender of License and Exemptions'', issued March 17, 2006, and is available at the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket numbers (P–2978, or P–2979 or P–2980) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E6–4465 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–116 Washington]

Public Utility District No. 2 of Grant County, WA; Notice of Intent To Hold Public Meetings

March 22, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Priest Rapids Hydroelectric Project No. 2114–116, located on the mid-Columbia River, near the city of Ellensburg, in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and issued a draft Environmental Impact Statement (EIS) for the project on February 28, 2006.

Copies of the draft EIS are available for review at the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* under the e-Library link by entering the docket number, P–2114, in the e-Library docket number field. For assistance, e-mail FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You are invited to attend either one or both of two public meetings that will be held to receive comments on the draft EIS. The time and location of the meetings are as follows:

Date: April 19, 2006.

Time: 2:30 to 5 p.m. and 7 to 9:30 p.m. (PST).

Place: Moses Lake Convention Center.

Address: 1475 Nelson Rd., NE., Moses Lake, WA 98837.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. These meetings are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Whether or not you attend one of these meetings, you are invited to submit written comments on the draft EIS. Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by May 2, 2006, and should reference Project No. 2114–116. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Library'' link.

The Commission staff will consider comments made on the draft EIS in preparing a final EIS for the project. Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

For further information, contact Charles Hall at (202) 502–6853 or at *charles.hall@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4452 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12608–000]

Alternatives Unlimited, Inc.; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

March 21, 2006.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 12608–000.

c. *Date filed:* August 15, 2005.

d. *Applicant:* Alternatives Unlimited, Inc.

e. *Name of Project:* Alternatives Hydro Power Project.

f. *Location:* On the Mumford River, in the Town of Northbridge, Worcester County, Massachusetts. The project would not use Federal land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705 and 2708.

h. *Applicant Contact:* Kathleen D. Hervol. Beals and Thomas, Inc. Reservoir Corporate Center, 144 Turnpike Road (Route 9), Southborough, MA 01772–2104, (508) 366–0560.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is May 22, 2006; reply comments are due 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted and is now ready for environmental analysis at this time.

l. *Description of Project:* The Alternatives Hydro Power Project would consist of: (1) The existing 127-foot-long by 15.5-foot-high Ring Shop Dam consisting of a concrete 9.5-foot-high spillway topped with 2.5-foot-high flashboards, a waste gate, and two inlet structures located at the north and south ends of the spillway; (2) an existing 1.3-acre reservoir enlarged to 2 acres with a normal full pond elevation of 285.1 feet above mean sea level; (3) a restored 8-foot-wide head gated intake structure; (4) a new 23-foot by 6-foot metal service platform (to be enclosed for a future powerhouse) located at the south side of the dam containing three generating units with a total installed capacity of 45 kilowatts; and (5) appurtenant facilities. The restored project would have an average annual generation of 340 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the exemption application. The application will be processed according to the schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Notice of the availability of the EA.	August 2006.
Ready for Commission decision on the application.	October 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4463 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12629–000]

Corriveau Hydroelectric Project; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

March 21, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* 5–MW Exemption.

b. *Project No.:* 12629–000.

c. *Date filed:* December 7, 2005.

d. *Applicant:* F & B Wood Corp.

e. *Name of Project:* Corriveau Hydroelectric Project.

f. *Location:* On the Swift River, near the town of Mexico, Oxford County, Maine. This project does not occupy federal lands.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. James D. Sysko, Small Hydro East, 524 Jim's Drive, Newry, Maine 04261. (207) 824–3244.

i. *FERC Contact:* Michael Spencer, (202) 502–6093, *encer@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 19, 2006. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents

with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. *Description of Project:* The Corriveau Hydroelectric Project would consist of the following existing facilities: (1) The 150-foot-long by 9-foot-high dam; (2) a 2.0 acre reservoir, (3) a 125-foot-long intake canal; (4) a powerhouse containing three generating units with total installed generating capacity of 350 kilowatts (kW); and (4) appurtenant facilities. The restored project would have an average annual generation of 1,306,900 kilowatt-hours. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERCO Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intend to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the exemption application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Notice availability of EA	July 2006.
Ready for Commission Decision on Application.	September 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4464 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2595, et al.]

Notice of Commission Staff Attendance at Midwest ISO Advisory Committee and Annual Stakeholder Meetings

March 21, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the following Midwest Independent Transmission System Operator, Inc. (Midwest ISO) Advisory Committee and Annual Stakeholder Meetings:

• Midwest ISO Advisory Committee Meeting—April 12, 2006, 10 a.m.–11 a.m. (EST)

Lakeside Conference Center, 630 West Carmel Drive, Carmel, IN 46032.

• Midwest ISO Annual Stakeholder Meeting—April 19, 2006, 10 a.m.–4 p.m. (EST)

Marriott Indianapolis North, 3645 River Crossing parkway, Indianapolis, IN 46240. 800–228–9290.

For further information regarding the times and agendas of meetings, please see *http://www.midwestiso.org/calendar/index.php* or *http://www.midwestmarket.org.home.*

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER02–2595, *et al., Midwest Independent Transmission System Operator, Inc.*

Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER04–458, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–6, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER05–1083, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–1085, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–18, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket Nos. EC06–4 and ER06–20, *LGE Energy LLC, et al.*
Docket No. ER06–360, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–4461 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–432–000]

Southwest Power Pool, Inc.; Notice of Technical Conference

March 22, 2006.

Take notice that a technical conference will be convened on Monday, April 10, 2006, from 1 p.m. to 4 p.m. (EST), in Conference Room 3M–3 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will deal with two issues related to Southwest Power Pool, Inc.'s proposed credit policy, as discussed in the Commission's February 28, 2006 Order.[1] Specifically the Commission directed Commission staff to examine SPP's proposed total debt to total capitalization and debt service coverage scores and SPP's proposed $50,000 unsecured credit floor for not-for-profit entities.[2] The Commission found that SPP's proposal may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepted SPP's Credit Policy for filing and suspended it to become effective on March 1, 2006, subject to refund and the outcome of a technical conference. A report on the technical conference is due to the Commission no later than May 30, 2006.

Attached to this notice are questions to the parties in this proceeding. Responses to these questions should be filed no later than ten days before the date of the conference. The submitted information will be discussed at the technical conference and used to supplement the record.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (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 Jignasa Gadani at (202) 502–8608 or e-mail *jignasa.gadani@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4451 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Southwest Power Pool, Inc., 114 FERC ¶ 61,222 (2006).

[2] Id. at P 32 and 62.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Meetings of Southwest Power Pool Regional State Committee and Board of Directors/Members Committee

March 21, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Regional State Committee and Board of Directors/Members Committee noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee—April 24, 2006 (1 p.m.–5 p.m.) (CST).

Renaissance Hotel & Cox Convention Center, 10 North Broadway, Oklahoma City, OK 73102, 405–228–8000.

SPP Board of Directors/Members Committee—April 25, 2006 (8 a.m.–3 p.m.) (CST).

Renaissance Hotel & Cox Convention Center, 10 North Broadway, Oklahoma City, OK 73102, 405–228–8000.

The discussions may address matters at issue in the following proceedings:

Docket Nos. RT04–1 and ER04–48, *Southwest Power Pool, Inc.*
Docket No. ER05–109, *Southwest Power Pool, Inc.*
Docket No. ER05–652, *Southwest Power Pool, Inc.*
Docket No. ER05–799, *Southwest Power Pool, Inc.*
Docket No. ER05–1065, *Entergy Services, Inc.*
Docket No. ER05–1285, *Southwest Power Pool, Inc.*
Docket No. ER05–1352, *Southwest Power Pool, Inc.*
Docket No. ER05–1416, *Southwest Power Pool, Inc.*
Docket No. ER06–15, *Southwest Power Pool, Inc.*
Docket No. ER06–432, *Southwest Power Pool, Inc.*
Docket No. ER06–448, *Southwest Power Pool, Inc.*
Docket No. ER06–451, *Southwest Power Pool, Inc.*

Docket No. ER06–641, *Southwest Power Pool, Inc.*
Docket No. ER06–727, *Southwest Power Pool, Inc.*
Docket No. ER06–729, *Southwest Power Pool, Inc.*

The meetings are open to the public.

For more information, contact Tony Ingram, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (501) 614–4789 or *tony.ingram@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–4462 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

March 22, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Date received	Presenter or requester
Exempt:		
1. CP03–33–002	3–6–06	John R. Staffier.
2. CP04–36–000, CP04–41–000	2–24–06	Hon. Jack Reed. Hon. Patrick J. Kennedy. Hon. James R. Langevin.
3. CP05–420–000	3–15–06	Magdalene Manco.
4. CP06–12–000, CP06–13–000, CP06–14–000	3–15–06	J. D. Bjostad.
5. CP06–12–000	3–7–06	Paula Vassey.
6. CP06–54–000	3–9–06	Hon. Charles Schumer. Hon. Hillary Rodham Clinton. Hon. Timothy Bishop.
7. IS06–191–000	3–7–06	Hon. L. Scott Lingamfelter.
8. Project No. 459–128	3–6–06	Hon. Wm. Lacy Clay.
9. Project No. 459–128	3–10–06	Terry and Carol Welch.
10. Project No. 459–128	3–6–06	Hon. James M. Talent.
11. Project No. 459–128	3–15–06	Hon. James M. Talent.
12. Project No. 1971–000	3–9–06	Anthonie M.A. Holthuijzen.
13. Project No. 1971–079	3–15–06	Craig Jones.
14. Project Nos. 2071–013, 2111–018, 2213–011 and 935–053	3–14–06	Chris Maynard.
15. Project No. 2146–000	3–10–06	Spencer Bachus.
16. Project No. 2197–000	3–10–06	Hon. Elizabeth Dole.
17. Project No. 2984–000	3–7–06	Hon. Susan M. Collins.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4447 Filed 3–27–06; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, April 4, 2006, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. Systemic Task Force Report

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: March 24, 2006.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 06–3019 Filed 3–24–06; 12:23 pm]

BILLING CODE 6570–06–M

FARM CREDIT ADMINISTRATION

RIN 3052–AC15

Statement on Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice.

SUMMARY: This notice is part of our most recent initiative to reduce regulatory burden for the Farm Credit System (FCS or System). Many System institutions responded to our May 2003 request for comments by identifying regulations that they considered burdensome, ineffective, or duplicative. Since May 2003, FCA has adopted a number of final rules addressing many of the comments. We are publishing contemporaneously a separate proposed rule in the **Federal Register** to change or remove several regulations. This notice responds to the comments that address regulations we are not changing at this time.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Associate Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

On May 16, 2003, we published a notice in the **Federal Register** inviting the public to comment on our regulations and policies that may duplicate other requirements, are not effective in achieving stated objectives or impose burdens that are greater than the benefits received. See 68 FR 26551. We took this action in our continuing effort to improve the regulatory environment so System institutions can more effectively serve farmers, ranchers, aquatic producers, their cooperatives, and other rural residents. We received 19 comment letters, 16 of which were from System institutions, one from the Farm Credit Council, and one from CoBank, ACB's Northeast Regional Council. One comment letter was from an individual.

Since May 2003, we have published a number of final rules that addressed many of the comments, including those related to: (1) Required effective interest rate disclosures, (2) distressed loan restructuring, (3) lending authorities under title III of the 1971 Farm Credit Act, as amended (Act), (4) liquidity reserve requirements, and (5) risk weighting. Additionally, the FCA has provided additional guidance to System institutions on a number of the issues raised in the comments including a Board adopted policy statement in June 2005, that provides the framework for examination policies and a November 2004, Informational Memorandum that clarified our 2002 E-Commerce rule.

To further our effort to reduce regulatory burden we are publishing a proposed rule contemporaneously with this notice that proposes changes or deletions to five regulations that were identified by commenters as unnecessary and burdensome.

The purpose of this notice is to address comments raised about FCA regulations that will not be changed in connection with this project. A number of the issues raised by commenters are the subject of other regulatory projects scheduled for consideration by the FCA as set forth in FCA's Semiannual Regulatory Agenda published in the **Federal Register** on October 31, 2005. See 70 FR 65530.

However, in some cases, commenters identified regulations that implement statutory requirements or safety and soundness measures that cannot be changed or need significant further evaluation before we can consider whether changes are appropriate. Moreover, some of the comments are the same or similar to those we received and considered (but did not implement) over the past 10 years. Although we are not recommending changes to these regulations at this time, we may propose changes in the future. Additionally, some commenters appear to have misinterpreted our regulations and therefore no revision of our rules is needed in order to address the commenters' concerns. We have attempted to clarify those regulations in this notice. The following section summarizes the comments we received on regulations that we are not proposing to change at this time.

II. Regulations That We Are Not Proposing To Change at This Time

A. Employee Standards of Conduct

One commenter recommended that we revise § 612.2150(j) and (k), which limit when a System employee can act as an agent or broker in the sale of real estate or insurance. The commenter suggested that System employees acting as agents or brokers in the sale of real estate or insurance should be able to do so as long as such transactions do not involve the directors, employees, borrowers, or loan applicants of the employing institution. The Agency prohibits System employees who are licensed real estate agents or brokers from acting as agents or brokers for their respective institutions in order to avoid real and perceived conflicts of interest. We continue to believe that this is an important conflict-of-interest provision and are not proposing a change at this time.

B. Maximum 15-Year Amortization for Production Credit Association (PCA) Loans

One commenter suggested that we eliminate the 15-year amortization requirement for PCA loan terms and remove the restriction that a PCA loan may not be made for the purpose of acquiring unimproved real estate. Similar comments were raised during the 1997 rulemaking that implemented these provisions. Section 1.10(b) of the Act states, ''[l]oans, other than real estate loans, and discounts made under the provisions of this title shall be repayable in not more than 7 years (15 years if made to producers or harvesters of aquatic products).'' This section provides that FCA may, by regulation, provide for up to a 10-year repayment period. FCA has implemented this provision in § 614.4040(a), which allows PCAs to amortize loans for 15 years, although the repayment period cannot exceed 10 years. As we indicated in the 1997 final rule, these provisions are consistent with the differing lending authorities of PCAs and Federal Land Credit Associations (FLCAs) and recognize the importance of the Act's distinction between long-term real estate lenders and short- and intermediate-term lenders. In addition,

under the agriculture credit association (ACA) subsidiary structure, PCA customers have access to FLCA services to fill their long-term credit needs. Therefore, we are not proposing any change to our regulations in response to these comments at this time.

C. Loan Policies and Operations

We received many comments on a broad range of regulations contained in part 614 on loan policies and operations. One commenter stated the collateral evaluation requirements contained in § 614.4265 are burdensome and exceed comparable standards imposed on the System's competitors. Specifically, the commenter said that § 614.4265(d) on documenting the evaluation of the income and debt-servicing capacity for the property and operation where the transaction amount exceeds $250,000 is excessive.

One commenter stated that § 614.4325(e) requiring an independent judgment on the credit worthiness of borrowers in transactions involving the purchase of a group or pool of loans is burdensome. The commenter suggested the requirement be eliminated or revised to allow for System institutions to underwrite group or pooled participations on a composite analysis basis. Another commenter reiterated this position and stated the underwriter should have jurisdiction over whether or not the purchaser of the group or pool of loans would identify the extent of analysis needed.

Two commenters recommended that we eliminate the requirement in § 614.4325(h)(4)(ii) allowing an association, in transactions where its funding bank serves as its agent in the purchase of loans, to require its funding bank to purchase any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

The intent of these regulations is to implement various sections of the Act and/or important safety and soundness measures and we are not proposing to change them at this time. However, FCA is committed to ensuring that the System is able to meet the credit needs of farmers, ranchers, aquatic producers and harvesters, cooperatives, and rural residents. The FCA also recognizes that the operating environment of the FCS is changing rapidly. Therefore, we will continue to consider the commenters' suggestions to identify ways to relieve the System of unnecessary regulatory burdens.

D. Loans to Designated Parties

Several commenters recommended changes to the prior approval requirements of district banks for loans to designated parties made by their affiliate associations. One commenter stated direct lender associations should be responsible for administering their own loan approval processes, implementing appropriate internal controls, and reporting to their boards of directors. Two commenters suggested that approving loans to association directors and/or employees should be the responsibility of the direct lending association not their funding bank.

FCA initiated a rulemaking to implement the commenters suggestions in 1999–2001; however, FCA received many negative comments from System institutions on our proposed changes and did not adopt a final rule. We are therefore not proposing any changes at this time.

E. Flood Insurance

Two commenters asked us to exempt certain farm and ranch outbuildings and commercial agribusiness firms from flood insurance requirements by establishing a *de minimis* level of building contributory value, below which a flood insurance determination would not be required. The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 require that federally regulated lenders, including System institutions, document the determination of flood hazard status for all loans where a building or mobile home is offered as collateral to secure a loan. This determination is done by completing a standard flood hazard determination form (SFHDF). However, if the collateral is only bare land, there is no requirement to complete a SFHDF. The flood insurance statutes do not provide FCA discretion to establish a *de minimis* level of building contributory value, below which a flood insurance determination would not be required.

F. Related Services—Authorization Process

Several commenters addressed provisions of FCA regulations governing related services. These commenters stated that the approval process for related services is burdensome and discourages innovation. In 1995, when the Agency adopted its final rule on related services, we explained in the preamble that the review and approval process is the least burdensome way to adequately control program risks. While we are open to suggestions for reform in this area, we are not proposing any change at this point.

G. Related Services—Farm-Related Businesses

The commenters also suggested that FCA remove prohibitions on providing financially related services to farm-related businesses. Current § 618.8005 repeats the language of section 2.5 of the Act. We will continue to review this issue to determine whether we may appropriately broaden eligibility requirements. However, we are not proposing any change in our regulations at this time.

H. Related Services—Feasibility Reviews

Two commenters suggested the requirement that a funding bank's board of directors verify that its affiliate associations have performed feasibility analyses before offering a related service for the first time is not required by the Act and is burdensome. The commenters recommended the determination that the feasibility analysis is complete be done by FCA examination personnel.

Three sections of the Act (sections 1.12, 2.5, and 2.12) require that the board of directors of the Farm Credit Banks must determine the feasibility of an association providing a related service. Section 618.8025 states that to comply with this statutory requirement the bank board of directors need only determine that the association's feasibility analysis is complete and that the analysis determines that it is feasible to make this related service available.

I. Authorized Insurance Service

Five commenters addressed FCA regulations authorizing System institutions to offer insurance services to their members and borrowers. Some commenters suggested that the requirement that a borrower sign a written notice acknowledging that any insurance offered is optional is burdensome and unnecessary. Two commenters recommended the FCA eliminate the requirement that System institutions offer more than one insurer.

The Agency has previously stated that the signed consent does not necessarily impose additional paperwork requirements on the banks and associations because required notices can be incorporated into existing loan documents. The Act requires that ''the board of directors of the association or bank selects and offers at least two approved insurers for each type of insurance made available to the members and borrowers, if at least two insurers have been approved.'' To effectuate the statutory requirement,

§ 618.8040(b)(4)(v) states that if the bank or association has selected less than two insurers, it has to document the reasons why it is unable to offer borrowers additional insurers.

Another commenter stated that the current 5-percent restriction on incentive compensation for loan officers tied to sales of crop insurance is too restrictive. The preamble to § 618.8040(b)(6)(60 FR 34090, June 30, 1995) states that ''the FCA continues to believe that unrestricted incentive compensation based on volume of insurance sales may lead to conflicts of interest or coercion in the case of loan officer * * *.'' At the time, the regulation was modified to allow unlimited incentive compensation for full-time insurance personnel or full-time managers and supervisors of insurance departments. While we believe that the 1995 regulation remains appropriate and are not proposing any changes, we may review this regulation in the future.

J. Releasing Borrower Information

One commenter suggested that §§ 618.8320 and 618.8330 be amended to include an exception that would allow System employees to disclose borrower information in response to a lawful subpoena, summons, warrant, or court order. Under the current regulations, if an employee is summoned as a witness, the employee must appear, advise the court of these regulations, and disclose information after being ordered by the court.

These regulations were amended in the direct final rule published August 9, 1999 (64 FR 43046). The final regulation allows a bank or association to disclose confidential information under the lawful order of a court if the Government or institution is not a party to the litigation. As a result, institutions do not automatically have to contest every order to produce documents or testimony. Confidential borrower information as defined by § 618.8320(a) may be released only if a judge issues the order. We believe that this requirement is necessary to protect borrower confidentiality because the judge can impartially decide whether the litigant needs the confidential information in the institution's possession.

One commenter also suggested that we expand § 618.8320 (b)(4) to include any kind of transaction authorized under the Act, including lease transactions, sales of participations, and other interests in loans. This regulation states that, ''[i]nformation concerning borrowers may be given for the confidential use of any Farm Credit institution in contemplation of the extension of credit or the collection of loans.'' Lease transactions, sales of participations, and other interests in loans are all considered extensions of credit for purposes of this section. Therefore, no regulatory changes are necessary to implement the commenter's suggestion.

K. Young, Beginning and Small (YBS) Farmers and Ranchers Reporting

Four commenters addressed the requirements for tracking, monitoring, and reporting loans to YBS farmers and ranchers. One commenter stated that the methodology used to report these loans is cumbersome and not very informative. Another commenter suggested that the reporting requirements should apply only to the primary customer. Two commenters recommended that we change the reporting requirements so that they are consistent with small borrower reporting used by the commercial lending industry, which bases reporting on loan size, not borrower assets and income.

FCA's current YBS definitions and data collection requirements are based on other Government agencies' definitions, as well as the objective of the congressionally mandated mission for System institutions to serve YBS farmers and ranchers. Section 614.4165 does not require this reporting. These requirements are contained in annual Call Report instructions for preparing the Young, Beginning, and Small Farmers and Ranchers Report. The Call Report instructions state that reporting is required if ''* * * any individual that is obligated on the promissory note meets the definitional criteria as a young or beginning borrower.'' Therefore, a System institution is required to report a loan as young or beginning if any person obligated on the note meets any of these definitions. The Agency solicits this supplemental information to help us provide a more in-depth report to Congress on the performance of the System in fulfilling its statutory mission set forth in section 4.19 of the Act. The Agency recently completed its YBS Call for 2005. Therefore, we do not intend to change this policy at this time. However, the YBS Call Report is reviewed annually and could be subject to change in the future.

L. Interest Rate Shock and Ramp Requirements

One commenter recommended that the Agency eliminate interest rate shock and ramp requirements for System associations that are match funded. Section 615.5135 requires that bank boards develop and implement interest rate risk (IRR) management programs. One requirement of this regulation is that IRR management programs measure the potential impact of certain risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis. This is a safety and soundness requirement that FCA believes is appropriate and therefore we are not proposing any regulatory change at this time.

M. Confidentiality in Voting

Four commenters asked us to clarify or amend § 611.330. Some commenters were unsure when a third-party tabulator is required to tally stockholder votes and asked for clarification. Other commenters stated that the requirement for a third-party tabulator is unnecessary and burdensome. One commenter suggested that we remove the requirement that weighted votes be tabulated by an independent third party because this is not required by the Act.

Section 4.20 of the Act requires that FCS institutions implement safeguards to protect shareholders' rights to a secret ballot. Section 611.330 implements this section of the Act. Section 611.330(b) requires the use of an independent third party to tabulate vote results if the ballot contains an identifying code. If no code is used, then there is no regulatory requirement for an independent third party. For weighted votes, such as association ballots that are weighted by the number of shareholders determined by the bank, the votes must be tabulated by an independent third party. Otherwise, when an association submits a weighted vote, the factor that determines the weight (*e.g.*, number of shareholders) would breach the confidentiality requirement of section 4.20 of the Act because the bank could determine who submitted the ballot by the weight factor. At this time, we believe that our regulations help ensure that the appropriate safeguards are in place to protect shareholders' right to a secret ballot and we do not find these regulations to be unnecessary or burdensome. Therefore, we are not proposing any changes to § 611.330.

N. Employee Standards of Conduct—Disclosure Requirements

One commenter suggested that we limit the standards of conduct disclosure obligation to officers. Section 612.2155(b) requires that System employees complete standards of conduct disclosures at intervals determined by the board.

As explained in the preamble to FCA's final rule on Personnel Administration (59 FR 24889, May 13, 1994), § 612.2155 allows System institutions to determine employee reporting frequency for matters not required by part 620 disclosures, but the institution must establish reporting requirements sufficient to permit the effective enforcement of the regulations and the standards of conduct policy. This allows System institutions to exclude certain individuals or classes of individuals from the reporting requirement based on the functions the employee performs. For instance, positions where there is a substantial degree of supervision and a low level of responsibility may make the reporting requirement unnecessary. Therefore, System institutions already have the ability to limit who must complete the standards of conduct disclosure as requested by the commenter.

O. Federal Land Credit Associations (FLCAs)

One commenter suggested that we revise § 614.4030 to permit FLCAs to participate with non-System institutions on loans authorized under title I and title II of the Act. This regulatory requirement implements section 1.5(12)(C) of the Act, which provides that an FLCA may participate with non-System lenders on title I type loans only. However, an FLCA could become an agricultural credit association with a PCA and an FLCA subsidiary so that the ACA had short- and intermediate-term lending authority enabling the ACA to participate in loans authorized under title I and title II of the Act.

P. Territorial Concurrence

One commenter asked that we clarify and simplify the territorial concurrence rules contained in § 614.4070. The commenter suggested that FCA adopt a rule that would not require territorial concurrence when an association makes a loan to an eligible borrower that either resides or has operations in the direct lender association's territory. Currently, a bank or association operating under title I or II of the Act must get territorial concurrence when it lends to an eligible borrower that: (1) Is headquartered and operating in its territory even though the operation financed is conducted partially outside its territory, (2) is headquartered outside its territory to finance eligible borrower operations that are conducted partially within its territory and partially outside its territory, (3) finances eligible borrower operations conducted wholly outside its chartered territory, provided such loans are authorized by the policies of the bank and/or association involved and do not constitute a significant shift in loan volume away from the bank or association's assigned territory, or (4) has operations wholly outside its chartered territory. We are not proposing a regulatory change at this time because of the potentially significant impact of changing this rule. However, we will continue to apply and clarify our existing rule on a case-by-case basis to help ensure consistent application of § 614.4070.

Q. Loan Terms and Conditions—General Requirements

One commenter suggested that the Agency allow System institutions with long-term lending authority to make loans in participation with Government agency lenders when the loan-to-value ratio of the entire debt is greater than 85 percent, but the Government agency lender takes the first risk of loss on the portion of the indebtedness that exceeds the 85-percent limit. The commenter asserts that this would make financing more available for YBS farmers and ranchers.

Section 1.10(a) of the Act requires a long-term mortgage loan that: (1) Is secured by a first-lien interest in real estate, and (2) does not exceed 85 percent of the appraised value of the mortgaged property, except that FCS banks and associations may finance up to 97 percent of the appraised value of the property if the loan is guaranteed by a governmental agency. In addition, section 12 of the Farm Credit System Reform Act of 1996 amended section 1.10(a) of the Act so that System mortgage lenders can rely on private mortgage insurance (PMI) when the loan-to-value ratio exceeds 85 percent. Under the Act, if the Government agency in the commenter's example is acting as a guarantor of the entire loan, the System lender can finance up to 97 percent; however, if the Government agency is acting as another lender ''participating'' in the loan, then the 85-percent rule (with the PMI exception) applies.

R. Disclosure to Shareholders

We received several comments on FCA's regulatory requirements on disclosures to shareholders. Many of the issues raised by commenters are being addressed in other regulatory projects scheduled to be considered by FCA. However, one commenter suggested that the costs and efforts in preparing and mailing the Association Annual Meeting Information Statement (AAMIS) are not justified by the marginal benefit derived by stockholders, and sought more flexibility in providing the AAMIS to stockholders. The FCA believes the requirements for items to be disclosed in the AAMIS are reasonable and do provide benefits. However, the FCA does allow the AAMIS to be mailed to stockholders with the annual report so long as the annual meeting is held within the time requirements prescribed in the regulations.

S. Grounds for Appointment of Conservators and Receivers

One commenter stated that § 627.2710(b) requires FCA determination of a ''material'' default by an association on a general financing agreement (GFA) before action can be taken by the affiliated bank. The commenter stated that this is an infringement on the bank-association contractual relationship that places the bank in the position of entering into a lending relationship with an association without being able to collect the debt due without FCA's approval. However, while a bank has authority to declare an association in default of a GFA, it cannot place an association in receivership. The preamble to this final regulation dated July 22, 1998 (63 FR 39219) stated that ''[t]he FCA Board further believes that the Agency, not the bank nor the association, should be responsible for determining, as a ground for appointing a conservator or receiver, what constitutes a material default of the GFA.'' We are therefore not proposing any change at this time.

III. Future Efforts To Reduce Regulatory Burdens on FCS Institutions

As noted above, we will consider remaining regulatory burden issues raised during the comment period in separate regulatory projects. We will continue our efforts to remove regulatory burden. However, we will maintain those regulations that are necessary to implement the Act and are critical for the safety and soundness of the System. Our approach will enable the FCS to continue to provide credit to America's farmers, ranchers, aquatic producers, their cooperatives and other rural residents.

Dated: March 23, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–4493 Filed 3–27–06; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL TRADE COMMISSION

Public Workshop: Protecting Consumers in the New Mortgage Marketplace

AGENCY: Federal Trade Commission (''FTC'' or the ''Commission'').

ACTION: Notice Announcing Public Workshop and Requesting Participation.

SUMMARY: The FTC is planning to host a public workshop, *Protecting Consumers in the New Mortgage Marketplace.* The workshop will explore consumer protection issues arising from the emergence of ''nontraditional'' or ''alternative'' mortgage products in the United States residential mortgage marketplace. The workshop will provide an opportunity for government regulators, industry participants, consumer advocates, and other interested parties to discuss the impact of these products on consumers and the marketplace.

The event is open to the public and there is no fee for attendance. For admittance to the workshop, all attendees will be required to show a valid form of photo identification, such as a driver's license.

Additional information about the workshop will be posted on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/mortgage/index.html.*

Date and Location: The workshop will be held on May 24, 2006, from 8:30 a.m. to 5:30 p.m., at the Federal Trade Commission's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC.

Requests to Participate as Workshop Panelists: FTC staff will identify and invite individuals with relevant expertise to participate as panelists. In addition, the FTC staff may invite other persons to participate as panelists who submit requests in response to this **Federal Register** notice. Requests to participate as panelists in the workshop must be received on or before Wednesday, April 12, 2006. Persons filing requests to participate as panelists will be notified whether they have been invited on or before Wednesday, April 26, 2006. For further instructions, please see the ''Requests to Participate as Workshop Panelists'' section under **SUPPLEMENTARY INFORMATION** below.

Workshop Agenda: Additional information about the workshop will be posted on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/mortgage/index.html.* An agenda will be posted there in advance of the workshop.

FOR FURTHER INFORMATION CONTACT: Julie Bush, (202) 326–3608, or Delores Thompson, (202) 326–2264, FTC, Bureau of Consumer Protection. The FTC staff contacts can be reached by e-mail at: *mortgageworkshop@ftc.gov,* and by mail or overnight delivery at: Federal Trade Commission, 601 New Jersey Avenue, NW., Mail Stop NJ–3158, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

As housing prices throughout the United States have soared in recent years, a variety of alternative mortgage products have grown increasingly prevalent in the mortgage marketplace. Among the most significant products are ''*interest-only*'' loans and payment option adjustable rate mortgage (ARM) loans (or ''*pick-a-payment*'' loans). The proportion of new mortgages consisting of interest-only and pick-a-payment loans rose dramatically over the last few years. In 2000, such loans made up less than one percent of the home mortgage market. By 2005, they reportedly comprised as much as fifty percent of all new mortgage loans.

These mortgage products may provide benefits for many consumers. Consumers may gain the ability to purchase homes at prices they could not afford using traditional thirty-year, fixed rate mortgages, because the minimum monthly payments required during the initial periods of these loan products are much lower. Moreover, these mortgage products may be especially well suited for certain consumers, such as those with an uneven pattern of income or those anticipating a rise in income.

These mortgage products may also present unexpected risks for consumers. Consumers may not adequately understand that such mortgages could result in ''*payment shock,*'' when minimum monthly payment amounts jump by as much as 100% upon expiration of a loan's initial period. They also may not understand that some of these loans may yield *negative amortization, i.e.,* a rise in the loan balance because mortgage payments are less than the interest due. Additionally, because these products permit borrowers to defer repayment of principal, borrowers build no equity except to the extent that their homes appreciate in value. Therefore, such loans may be particularly risky in the face of changing market conditions.

Workshop Goals

The workshop will focus on the consumer protection issues that arise in connection with the prevalence of nontraditional mortgage products. Specifically, the FTC will explore various aspects of the current residential mortgage marketplace, including how these mortgage products have evolved, the benefits and risks they pose for consumers, how market forces shape the prevalence of particular mortgage products, and current consumer understanding of the terms, features, risks, and benefits of these loans. Among the many issues the workshop may address are:

- What are the mortgage product alternatives offered today? Who are the typical borrowers for each product type? What are the trends in this new marketplace?
- What are the benefits and risks to consumers of products such as interest-only and pick-a-payment loans? Are consumers aware of the risks and benefits?
- To what extent are such loans marketed or made to low-income consumers or consumers with low credit scores? Do loans made to such consumers differ in important ways from those made to consumers with higher incomes or better credit scores?
- Why have these products become so prevalent in recent years? What are the roles of lenders, brokers, government-sponsored entities, and secondary market investors in determining which loan products are offered?
- How well does the current regulatory framework address these loan products?
- How well do consumers understand the terms and features of these loans? What do they understand about the risks, such as payment shock or negative amortization?
- How significant is the issue of payment shock? How will it affect the marketplace in the coming years?
- How can consumers who hold these loans best prepare for, or avoid, payment shock?
- How can lenders, loan holders, servicers, or others participate in planning and developing solutions for the consumers who now hold these loans?
- What are best practices for consumers, lenders, and other participants in the loan marketplace?
- What is the FTC's role in protecting consumers in this new mortgage marketplace?

Requests To Participate as Workshop Panelists

The FTC staff will identify and invite individuals with relevant expertise to participate as panelists. In addition, the FTC staff may invite other persons to participate as panelists who submit requests in response to this **Federal Register** notice.

Parties seeking to nominate themselves as potential panelists in the workshop must notify the FTC in writing of their interest in participating on or before Wednesday, April 12, 2006. Requests to participate as workshop panelists should refer to ''Mortgage Workshop—Panelist Participation Request.'' A request to participate filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Mortgage Workshop, c/o Julie Bush, FTC, 601 New Jersey Avenue, NW., Mail Stop NJ–3158, Washington, DC 20580. If the request to participate contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC prefers that any request to participate filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area is subject to delay due to heightened security precautions. Please include an original and two copies of each document submitted in paper form.

In the alternative, parties may e-mail requests to participate as workshop panelists (except requests containing any confidential material) to *mortgageworkshop@ftc.gov* and should caption them: ''Mortgage Workshop—Panelist Participation Request.''

Requests to participate as workshop panelists should include the following information:

(1) A brief biographical description, including name and affiliation;

(2) A statement setting forth the potential panelist's expertise in or knowledge of one or more issues likely to be addressed by the workshop;

(3) A list of the topic(s) that the potential panelist would like to address, and a one-paragraph summary of the potential panelist's unique perspective or knowledge of each such topic; and

(4) Contact information, including a daytime telephone number, facsimile number, and e-mail address (if available).

Parties filing requests to participate as workshop panelists will be notified whether they have been invited on or before Wednesday, April 26, 2006.

The FTC Act and other laws the Commission administers permit the collection of requests to participate as workshop panelists, to consider and use in this proceeding as appropriate. 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.*

General Participation

The event is open to the public and there is no fee for attendance. For admittance to the workshop, all attendees will be required to show a valid form of photo identification, such as a driver's license.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–4439 Filed 3–27–06; 8:45 am]

BILLING CODE 6750–01–P

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The request to participate 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 request to participate to be withheld from the public record. The request for confidential treatment 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).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0395]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Product'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 2006 (71 FR 3858), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0429. The approval expires on March 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: March 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4424 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0507]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance on Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens That are Not Individually Identifiable

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance on Informed Consent for *In Vitro* Diagnostic Device Studies Using Leftover Human Specimens That are Not Individually Identifiable'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 9, 2006 (71 FR 1429), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0582. The approval expires on September 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: March 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4425 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0484]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 27, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting—21 CFR Part 803 (OMB Control Number 0910–0437)—Extension

Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(a), (b), and (c)) requires user facilities, manufacturers, and importers of medical devices to report adverse events involving medical devices to FDA. On December 11, 1995 (60 FR 63578 at 63597), FDA issued part 803 (21 CFR part 803) that implemented section 519 of the act. The regulation was amended to conform to the changes reflected in the FDA Modernization Act of 1997.

Information from these reports will be used to evaluate risks associated with medical devices and to enable FDA to take appropriate regulatory measures to protect the public health.

Respondents to this collection of information are businesses or other for profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

In the **Federal Register** of December 23, 2005 (70 FR 76318), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19	55	4	220	3	660
803.30	700	5	3,500	1	3,500
803.33, FDA Form 3419	700	1	700	1	700
803.40	40	17	680	1	680
803.50	1,465	57	83,505	1	83,505
803.55, FDA Form 3417	700	5	3,500	1	3,500
Total					92,545

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
803.17	220	1	220	3.3	726
803.18(c) and (d)	30,000	1	30,000	1.5	45,000
Total					45,726

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Part 803 requires user facilities to report to the device manufacturer, and to FDA in the case of a death, incidents where a medical device caused or contributed to a death or serious injury. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have

caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur, it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each CFR section in table 1 of this document is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the medical device reporting (MDR) requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints, under § 803.18(d).

The agency has estimated that on average, 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures to be 2,200 hours (220 respondents x 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

The annual burden for recordkeeping to respondents follows. Under § 803.17, FDA estimates 220 respondents will spend approximately 3.3 hours to complete the requirements for this section. The number of respondents was estimated by consolidating the total of all new reporting entities together. The 3.3 hours was estimated by FDA, as this section deals with a respondent creating new MDR procedures and is a one-time function. The ''total hours'' for this section equals approximately 726 hours.

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1 1/2 hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

Dated: March 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4426 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0118]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Reagents for Detection of Specific Novel Influenza A Viruses'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0584. The approval expires on September 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4427 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0508]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of Health Care Practitioners Regarding Their Preferences for Public Health Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 27, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Health Care Practitioners Regarding Their Preferences for Public Health Notifications (PHNs)

The PHN is one of the tools that the Center for Devices and Radiological Health (CDRH) uses to get an important message to the user community about risks associated with the use of medical devices. This particular tool is meant to serve a specific purpose not served by the other communication tools at our

disposal—to be a source of information for health care practitioners, immediately recognizable as a statement from FDA, about a device risk with information on how to avoid or mitigate the risk. The purpose of this project is to evaluate the current notification format and distribution process for CDRH, with the goal of determining what is necessary to assure that the notifications reach, and are acted upon by, the target audience. The center needs to know that it is using the most effective approach to formatting and to disseminating PHNs to assure that they are received, recognized, understood, and acted upon quickly and effectively by medical practitioners and institutions. Considerations include, but are not limited to, design, terminology, nomenclature, distribution, utility of standardization, relationship with other medical product notifications (e.g., recalls), use of electronic transmission, and use of plain language.

The intent of this project is to determine the preferences of the health care community for learning from FDA about risks associated with medical devices and to compare the current process against the approach identified by the research to be ''preferred'' with the intent of improving our format and process.

CDRH will conduct a survey of a sample of health care providers who receive a new PHN from FDA. Most recently, FDA has been using intermediary organizations, such as professional associations, to help us distribute notifications to the appropriate target audiences and we are assuming that any new PHN will be disseminated in this way, using the appropriate association to distribute the PHN to their members. Generally, the PHN is distributed to the target audience electronically, either as a link embedded in a news article or sent directly via e-mail from either the professional association or FDA using the e-mail listing provided by the professional association. As part of the notification, we will provide a link to a Web-based questionnaire that will collect information related to the health care providers' preferences for learning about risks associated with medical devices.

The information collected in this survey will help FDA identify the most effective format(s) and distribution method(s) for CDRH PHNs.

In the **Federal Register** of January 9, 2006 (71 FR 1428), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Survey of health care providers in relevant specialty	300	1	300	.1666	50
Survey of health care providers in another relevant specialty	300	1	300	.1666	50
Total					100

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions and completing the questionnaire.

Dated: March 22, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4440 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0489] (formerly Docket No. 01D–0489)

Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees'' dated March 2006. The guidance is intended to assist sponsors of clinical trials in determining when a data monitoring committee (DMC) is needed for study monitoring, and how such committees should operate. The guidance announced in this notice finalizes the draft guidance entitled ''Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees'' dated November 2001.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800; or the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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*.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210; Robert Temple,

Center for Drug Evaluation and Research (HFD–40), 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758; or Joanne Less, Center for Devices and Radiological Health (HFZ–403) 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees'' dated March 2006. The guidance is intended to assist sponsors of clinical trials in determining when a DMC is needed for study monitoring, and how such committees should operate. The guidance addresses the roles, responsibilities, and operating procedures of DMCs.

In the **Federal Register** of November 20, 2001 (66 FR 58151), FDA announced the availability of the draft guidance entitled ''Guidance for Clinical Trial Sponsors on the Establishment and Operation of Clinical Trial Data Monitoring Committees'' dated November 2001. FDA received a number of comments on the draft guidance and considered those comments carefully as the guidance was finalized. The final guidance also incorporates editorial and clarifying changes.

The 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 this topic. 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. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0581.

III. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. 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. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/cder/guidance.htm*, *http://www.fda.gov/cdrh*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–4428 Filed 3–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998N–0046]

Annual Comprehensive List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its annual comprehensive list of all guidance documents currently in use at the agency. This list is being published under FDA's good guidance practices (GGPs) regulations. It is intended to inform the public of the existence and availability of all of our current guidance documents. It also provides information on guidance documents that have been added or withdrawn in the past year.

DATES: We welcome general comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit written comments 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 information on a specific guidance or to obtain a hard copy of any of the guidances currently in use, contact the appropriate Center listed in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Regarding GGPs: Lisa Helmanis, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's GGPs were published in the **Federal Register** of September 19, 2000 (65 FR 56468), and became effective October 19, 2000. GGPs (§ 10.115 (21 CFR 10.115)) are intended to ensure involvement of the public in the development of guidance documents, and to enhance understanding of the availability, nature, and legal effect of such guidance. In § 10.115(n)(2), FDA stated that it intended to publish an annual comprehensive list of guidance documents. The list in this document updates a comprehensive list that published January 5, 2005 (70 FR 824).

This year FDA has adopted a new format for its annual comprehensive guidance list. This new format is intended to increase the timeliness of the annual comprehensive list. For information on a specific guidance or to obtain a hard copy, please refer to the heading of each Center's section (sections II through VIII of this document). The list of guidance documents that have been withdrawn is for those guidances that have been withdrawn from January 5, 2005, to January 5, 2006. The list of current guidance documents is a printout of FDA's Web site as of January 31, 2006 or February 1, 2006. You are encouraged to use FDA's Web site as the most up-to-date source for all current guidance documents in use by the agency, as the Web site is updated on a daily basis.

In accordance with the agency's general policy on guidances, you may comment on this list and on any FDA guidance document at any time.

We have organized the documents by the issuing Center or Office within FDA. The dates in the list refer to the date we issued the guidances or, where applicable, the last date we revised a document. Because each issuing Center or Office maintains its own database, there are slight variations in the way in which they provide the information in this document.

II. Center for Biologics Evaluation and Research (CBER)

For information on a specific guidance document or to obtain a hard copy, contact: Office of Communication, Training, and Manufacturers Assistance, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, *http://www.fda.gov/cber/guidelines.htm*.

The following is a list of CBER guidance documents that have been withdrawn from January 5, 2005, to January 5, 2006.

Title of Document	Date of Issuance	Date of Withdrawal
Draft Guideline for the Validation of Blood Establishment Computer Systems	9/28/1993	3/9/2005
Draft Guidance for Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments	8/3/2001	6/28/2005
Guidance for Industry: Discontinuation of Donor Referral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection	5/6/2005	6/30/2005

The following is a copy of the list of current CBER guidance documents obtained from the FDA Web site on March 14, 2006.

CBER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

2006

Draft Guidance for Industry: Clinical Data Needed to Support the Licensure of Pandemic Influenza Vaccines—3/2/2006
Draft Guidance for Industry: Clinical Data Needed to Support the Licensure of Trivalent Inactivated Influenza Vaccines—3/2/2006
FDA Initiative Helps Expedite Development of Seasonal and Pandemic Flu Vaccines—3/2/2006
Guidance for Industry: Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997—2/15/2006
Guidance for Industry: Considerations for Developmental Toxicity Studies for Preventive and Therapeutic Vaccines for Infectious Disease Indications—2/13/2006
Draft Guidance for Industry: Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims—2/2/2006
Guidance for Industry: Adverse Reactions Section of Labeling for Human Prescription Drug and Biological Products—Content and Format—1/18/2006
Guidance for Industry: Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format—1/18/2006
Draft Guidance for Industry: Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format—1/18/2006
Draft Guidance for Industry: Labeling for Human Prescription Drug and Biological Products—Implementing the New Content and Format Requirements—1/18/2006
Draft Guidance for Industry: INDs—Approaches to Complying with CGMP During Phase 1—1/12/2006
Guidance for Industry: Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP—1/11/2006
Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review—1/11/2006
Appendix 2
Appendix 3—CDER MAPP 6020.3, CBER SOPP 8405
Appendix 4

2005

Draft Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees—12/30/2005
FEDERAL REGISTER: Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees—12/30/3005
Draft Guidance for Industry: Safety, Efficacy, and Pharmacokinetic Studies to Support Marketing of Immune Globulin Intravenous (Human) as Replacement Therapy for Primary Humoral Immunodeficiency—11/30/2005
Guidance for Industry: MedWatch Form FDA 3500A: Mandatory Reporting of Adverse Reactions Related to Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)—11/30/2005
Draft Guidance for Industry: Recommendations for Implementing a Collection Program for Source Plasma Containing Disease-Associated and Other Immunoglobulin (IgG) Antibodies—10/19/2005
International Conference on Harmonisation (ICH); Guidance for Industry: E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs—10/19/2005
International Conference on Harmonisation (ICH); Guidance for Industry: S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals—10/19/2005
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications—10/18/2005
International Conference on Harmonisation (ICH); Guidance for Industry: Granularity Document Annex to M4: Organization of the CTD—10/18/2005
Draft Guidance for Industry and FDA Staff: Compliance with Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices—10/7/2005
Draft Guidance for Industry and FDA Staff: Compliance with Section 301 of the Medical Device User Fee and Modernization Act of 2002—Identification of Manufacturer of Medical Devices—6/19/2003
Draft Guidance for Industry and FDA Review Staff: Collection of Platelets by Automated Methods—9/30/2005
International Conference on Harmonisation (ICH); Guidance for Industry: E2B(R) Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports—9/30/2005
Draft Guidance for Industry: Using Electronic Means to Distribute Certain Product Information—9/29/2005
Guidance for Industry: Collection of Race and Ethnicity Data in Clinical Trials—9/19/2005
Guidance for Industry, FDA Staff, and FDA-Accredited Third Parties: Requests for Inspection by an Accredited Person under the Inspection by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act of 2002—9/15/2005
Draft Guidance for Industry: How to Comply with the Pediatric Research Equity Act—9/7/2005
International Conference on Harmonisation (ICH); Draft Guideline: M5 Data Elements and Standards for Drug Dictionaries—9/2/2005

CBER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Draft Guidance for Industry: Gene Therapy Clinical Trials—Observing Participants for Delayed Adverse Events—8/23/2005
International Conference on Harmonisation (ICH); Draft Consensus Guideline: Q9 Quality Risk Management—8/5/2005
Draft Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV–1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry—7/19/2005
Draft Guidance: Emergency Use Authorization of Medical Products—7/5/2005
FEDERAL REGISTER: Guidance for Industry: Discontinuation of Donor Deferral Related to Recent Fever with Headache as a Symptom of West Nile Virus Infection; Withdrawal of Guidance—6/30/2005
International Conference on Harmonisation (ICH); Guidance for Industry: Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process—6/29/2005
FEDERAL REGISTER: Draft Guidance for Food and Drug Administration Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments; Withdrawal of Guidance—6/28/2005
Guidance for Industry: Assessing Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection—6/23/2005
Draft Guidance for Industry: Bar Code Label Requirements—Questions and Answers—6/7/2005
Guidance for Industry: Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients—5/18/2005
Guidance for Industry and FDA Staff: Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices—5/12/2005
Draft Guidance for Industry: Toxicity Grading Scale for Healthy Adult and Adolescent Volunteers Enrolled in Preventive Vaccine Clinical Trials—4/29/2005
Reviewer Guidance: Evaluating the Risks of Drug Exposure in Human Pregnancies—4/27/2005
Guidance for Industry and FDA Staff: Application User Fees for Combination Products—4/20/2005
Guidance for Industry: Providing Regulatory Submissions in Electronic Format—Content of Labeling—4/20/2005
Guidance for Industry and FDA Staff: Submission and Resolution of Formal Disputes Regarding the Timeliness of Premarket Review of a Combination Product—4/11/2005
Draft Guidance for Industry: Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics—4/1/2005
International Conference on Harmonisation (ICH); Guidance for Industry: E2E Pharmacovigilance Planning—3/31/2005
Guidance for Review Staff and Industry: Good Review Management Principles for PDUFA Products—3/30/2005
Guidance for Industry: Premarketing Risk Assessment—3/25/2005
Guidance for Industry: Development and Use of Risk Minimization Action Plans—3/25/2005
Guidance for Industry: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment—3/25/2005
Draft Guidance for Industry: Using a Centralized IRB Review Process in Multicenter Clinical Trials—3/25/2005
Guidance for Industry: Pharmacogenomic Data Submissions—3/22/2005
Attachment to Guidance on Pharmacogenomic Data Submissions—3/22/2005
International Conference on Harmonisation (ICH) Guidance for Industry: M2: eCTD Specification; Questions & Answers and Change Requests—3/11/2005
Companion Document: Current Q&As and Change Requests—3/11/2005—Updated—7/18/2005—Updated—1/6/2006
International Conference on Harmonisation (ICH) Guidance for Industry: M2 eCTD: Electronic Common Technical Document Specification—4/1/2003
International Conference on Harmonisation (ICH) Guidance for Industry: E2B(M): Data Elements for Transmission of Individual Case Safety Reports: Questions and Answers (Revision 2)—3/9/2005
FEDERAL REGISTER: Draft Guideline for the Validation of Blood Establishment Computer Systems; Withdrawal of Guidance—3/9/2005
Draft Guidance for Industry and FDA Staff: Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle—3/9/2005
Draft Guidance for Industry: Manufacturing Biological Drug Substances, Intermediates, or Products Using Spore-Forming Microorganisms—2/23/2005
Draft Guidance for Industry: Considerations for Plasmid DNA Vaccines for Infectious Disease Indications—2/17/2005
Points to Consider on Plasmid DNA Vaccines for Preventive Infectious Disease Indications—12/27/1996
FEDERAL REGISTER: Annual Comprehensive List of Guidance Documents at the Food and Drug Administration; Correction—2/11/2005
FEDERAL REGISTER: Annual Comprehensive List of Guidance Documents at the Food and Drug Administration—1/5/2005
International Conference on Harmonisation (ICH); Draft Guidance on Q8 Pharmaceutical Development—2/8/2005
Draft Guidance for Industry: Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling—2/7/2005
International Conference on Harmonisation (ICH); Draft Guidance on S8 Immunotoxicity Studies for Human Pharmaceuticals—2/7/2005
Guidance for Industry: Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees—1/3/2005

2004

International Conference on Harmonisation (ICH); Guidance for Industry: M–4: CTD—Efficacy: Questions and Answers (Revision 3)—12/22/2004
International Conference on Harmonisation (ICH); Guidance for Industry: M4: The CTD—General: Questions and Answers (Revision 3)—12/22/2004
Guidance for Industry and FDA Staff: Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use—11/30/2004
Guidance for Industry: Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act of 1992; Notice of extension of application deadline—11/19/2004
Guidance for Industry: Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA—10/6/2003
Guidance for Industry and FDA Staff: Resolution of Disputes Concerning Payment or Refund of Medical Device User Fees Under MDUFMA—11/17/2004
Guidance for Industry: Recommendations for Obtaining a Labeling Claim for Communicable Disease Donor Screening Tests Using Cadaveric Blood Specimens from Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)—11/12/2004
Draft Guidance for FDA Review Staff and Sponsors: Content and Review of Chemistry, Manufacturing, and Control (CMC) Information for Human Gene Therapy Investigational New Drug Applications (INDs)—11/8/2004
Draft Guidance for Industry: Criteria for Safety and Efficacy Evaluation of Oxygen Therapeutics as Red Blood Cell Substitutes—10/28/2004

CBER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Guidance for Industry: Use of Nucleic Acid Tests on Pooled and Individual Samples from Donors of Whole Blood and Blood Components (including Source Plasma and Source Leukocytes) to Adequately and Appropriately Reduce the Risk of Transmission of HIV–1 and HCV—10/21/2004
Guidance for Industry, FDA Staff, and Third Parties: Implementation of the Inspection by Accredited Persons Program Under The Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria—10/1/2004
Guidance for Industry: FDA Review of Vaccine Labeling Requirements for Warnings, Use Instructions, and Precautionary Information—10/1/2004
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Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody Product for In Vivo Use—8/1996
International Conference on Harmonisation: Final Guidance on Stability Testing of Biotechnological / Biological Products—7/10/1996
Guidance for Industry—The Content and Format for Pediatric Use Supplements—5/1996
Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated ex vivo and Intended for Structural Repair or Reconstruction—5/1996

CBER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

FDA Guidance Concerning Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-Derived Products—4/1996
International Conference on Harmonisation: Final Guideline on the Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals—3/1996
International Conference on Harmonisation: Final Guideline on Quality of Biotechnical Products: Analysis of the Expression Construct in Cells Used for the Production of r-DNA Derived Protein Products—2/1996

1995 and earlier

Draft Reviewers' Guide: Disease Associated Antibody Collection Program—10/1/1995
Draft Reviewers' Guide: Informed Consent for Plasmapheresis / Immunization—10/1/1995
Guideline for Quality Assurance in Blood Establishments—7/11/1995 (NOTE: The text version does not contain Tables 1–8)
FDA Guidance Document Concerning Use of Pilot Manufacturing Facilities for the Development and Manufacturing of Biological Products—7/11/1995
Points to Consider in the Manufacture and Testing of Therapeutic Products for Human Use Derived from Transgenic Animals—1995
Guidance for Industry for the Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substance—11/1/1994
Guidance for Industry for the Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products—11/1994
Guidance on Alternatives to Lot Release for Licensed Biological Products—7/14/1993
Draft Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1993)—7/12/1993
FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics—11/25/1992
Supplement to the Points to Consider in the Production and Testing of New Drugs and Biologics Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability—4/6/1992
Guideline for the Determination of Residual Moisture in Dried Biological Products—1/1/1990
Guideline for Collection of Blood or Blood Products from Donors with Positive Tests for Infectious Disease Markers (''High Risk'' Donors)—10/26/1989
Points to Consider in the Collection, Processing, and Testing of Ex-Vivo Activated Mononeuclear Leukocytes for Administering to Humans—8/22/1989
Draft Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus Type 1—8/8/1989
Revised Guideline for the Collection of Platelets, Pheresis—10/7/1988
Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test For Human and Animal Parenteral Drugs, Biological Products and Medical Devices—12/1987
Guideline on General Principles of Process Validation—5/1987
Guideline for the Uniform Labeling of Blood and Blood Components—8/1985
Points to Consider in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology—4/10/1985
Interferon Test Procedures: Points to Consider in the Production and Testing of Interferon Intended for Investigational Use in Humans—7/28/1983
Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances—6/1980

III. Center for Drug Evaluation and Research (CDER)

For information on a specific guidance document or to obtain a hard copy, contact: Division of Drug Information, Office of Training and Communications, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573,*http://www.fda.gov/cder/guidance/index.htm*.

The following is a list of CDER guidance documents that have been withdrawn from January 5, 2005, to January 5, 2006.

Title of Document	Date of Issuance	Date of Withdrawal
Preclinical Development of Antiviral Drugs	11/1/1990	7/6/2005
Conjugated Estrogens, USP: LC–MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence	3/9/2000	8/12/2005
Phenytoin/Phenytoin Sodium Capsules, Tablets and Suspension In Vivo Bioequivalence and In Vitro Dissolution Testing	3/4/1994	9/6/2005
Organization of an Abbreviated New Drug Application	3/2/1999	11/18/2005
Preclinical Development of Immunomodulatory Drugs for Treatment of HIV Infection and Associated Disorders	9/4/1992	12/29/2005

The following is a copy of a list of current CDER guidance documents obtained from the FDA Web site as of March 14, 2006.

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

FDA's Good Guidance Practices regulation of September 19, 2000.
Comprehensive List of Guidance Documents (updated 2/28/2006)
Guidance Agenda: Guidances CDER is Planning to Develop During Calendar Year 2006 (03/01/2006)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

New/Revised/Withdrawn List for 2006 (updated 2/28/2006)
New/Revised/Withdrawn List for 2005 (updated 1/4/2006)

Advertising

Aerosol Steroid Product Safety Information in Prescription Drug Advertising and Promotional Labeling (Issued 12/1997, Posted 1/12/1998)
Consumer-Directed Broadcast Advertisements (Issued 8/1999, Posted 8/6/1999)
Questions and Answers (Posted 8/6/1999)
Industry-Supported Scientific and Educational Activities (Issued 12/3/1997, Posted 12/4/1997)

Advertising Draft

Accelerated Approval Products: Submission of Promotional Materials (Posted 3/26/1999)
Brief Summary: Disclosing Risk Information in Consumer-Directed Print Advertisements (Posted 2/4/2004)
Labeling Example
Labeling Example; Consumer-Friendly Version
Consumer-Directed Broadcast Advertising of Restricted Devices (Issued 1/26/2004, Posted 2/4/2004)
"Help-Seeking" and Other Disease Awareness Communications by or on Behalf of Drug and Device Firms (Issued 1/26/2004, Posted 2/4/2004)
Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling (Issued 1/1999, Posted 3/12/1999)
Promoting Medical Products in a Changing Healthcare Environment; I. Medical Product Promotion by Healthcare Organizations or Pharmacy Management Companies (PBMs) (Issued 12/1997. Posted 1/5/1998)

Biopharmaceutics

Bioanalytical Method Validation (Issued 5/2001, Posted 5/22/2001)
Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations (Issued 3/2003, Posted 3/19/2003)
Cholestyramine Powder in Vitro Bioequivalence (Intermin Guidance)
Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing (Issued 6/17/2005, Posted 6/17/2005)
Corticosteroids, Dermatologic (topical) In Vivo (Issued 6/2/1995, Posted 3/6/1998)
Dissolution Testing of Immediate Release Solid Oral Dosage Forms (Issued 8/1997, Posted 8/25/1997)
Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations (Issued 9/1997, Posted 9/26/1997)
Food-Effect Bioavailability and Fed Bioequivalence Studies (Issued 12/2002, Posted 1/30/2003)
Metaproterenol Sulfate and Albuterol Metered Dose Inhalers In Vitro (Issued 6/27/1989, Posted 3/2/1998)
Potassium Chloride (slow-release tablets and capsules) In Vivo Bioequivalence and In Vitro Dissolution Testing (Revised 6/6/1994, Posted 6/22/1998)
Statistical Approaches to Establishing Bioequivalence (Issued 2/2001, Posted 2/1/2001)
Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate-Release Solid Oral Dosage Forms Based on a Biopharmaceutics Classification System. (Issued 8/2000, Posted 8/31/2000)

Biopharmaceutics (Draft)

Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action (Posted 4/2/2003)
Statistical Information from the June 1999 Draft Guidance and Statistical Information for In Vitro Bioequivalence Data (Posted 4/11/2003)
Conjugated Estrogens, USP-LC-MS Method for Both Qualitative Chemical Characterization and Documentation of Qualitative Pharmaceutical Equivalence. Withdrawn per August 12, 2005, Federal Register notice.

CGMPs (Pharmaceutical CGMPs for the 21st Century)

Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP (Issued 1/11/2006; Posted 1/11/2006)
Questions and Answers on Current Good Manufacturing Practices (cGMP) for Drugs (Posted 8/4/2004)
Part 11, Electronic Records; Electronic Signatures—Scope and Application (Posted 9/3/2003)
PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance (posted 9/29/2004)
Sterile Drug Products Produced by Aseptic Processing—Current Good Manufacturing Practice Posted 9/29/2004

CGMPs (Pharmaceutical CGMPs for the 21st Century)—Draft

Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information (Posted 9/3/2003)
Current Good Manufacturing Practice for Combination Products (Posted 9/29/2004)
INDs—Approaches to Complying with CGMP's for Phase 1 Drugs (Issued 1/12/2006; Posted 1/12/2006)
Powder Blends and Finished Dosage Units—Stratified In-Process Dosage Unit Sampling and Assessment (Issued 11/2003, Posted 11/6/2003)
Revised Attachments (Issued 11/2003, Posted 11/21/2003)
Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations (Posted 9/29/2004)

Chemistry

BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation (Issued 2/2001, Posted 2/16/2001)
Botanical Drug Products (Issued 6/2004, Posted 6/9/2004)
Changes to an Approved Application for Specified Biotechnology and Specified Synthetic Biological Products (Issued 7/1997, Posted 7/28/1997)
Changes to an Approved NDA or ANDA (Issued 4/2004, Posted 4/7/2004)
Changes to an Approved NDA or ANDA: Questions and Answers (Issued 1/2001, Posted 1/22/2001)
Changes to an Approved NDA or ANDA; Specifications—Use of Enforcement Discretion for Compendial Changes (Issued 11/19/2004, Posted 11/19/2004)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Container Closure Systems for Packaging Human Drugs and Biologics (Issued 5/1999, Posted 7/6/1999)
Container Closure Systems for Packaging Human Drugs and Biologics—Questions and Answers (Issued 5/2002, Posted 5/10/2002)
Demonstration of Comparability of Human Biological Products, Including Therapeutic Biotechnology-derived Products
Development of New Stereoisomeric Drugs (5/1/1992) (Post Date: 1/3/1996)
Drug Master Files (9/1/1989)
Current DMF Information (e.g. lists, addresses, guidances, etc.)
Drug Master Files for Bulk Antibiotic Drug Substances (Issued 11/1999, Posted 11/26/1999)
Environmental Assessment of Human Drug and Biologics Applications (Issued 7/1998, Posted 7/24/98)
Format and Content of the Chemistry, Manufacturing and Controls Section of an Application* (Issued 2/1987, Posted 3/2/1998)
Format and Content for the CMC Section of an Annual Report (9/1/1994)
INDs for Phase 2 and Phase 3 Studies Chemistry, Manufacturing, and Controls Information (Posted 5/20/2003)
IND Meetings for Human Drugs and Biologics Chemistry, Manufacturing, and Controls Information (Issued 5/2001, Posted 6/4/2001)
Monoclonal Antibodies Used as Reagents in Drug Manufacturing (Issued 3/2001, Posted 3/28/2001)
Nasal Spray and Inhalation Solution, Suspension, and Drug Products (Issued 7/2002, Posted 7/3/2002)
NDAs: Impurities in Drug Substances (Issued 2/2000, Posted 2/24/2000)
PAC-ATLS: Postapproval Changes—Analytical Testing Laboratory Sites (Issued 4/28/1998, Posted 4/28/1998)
The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) (12/20/2000)
SUPAC-IR: Immediate-Release Solid Oral Dosage Forms: Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls, In Vitro Dissolution Testing, and In Vivo Bioequivalence Documentation
SUPAC-IR Questions and Answers about SUPAC-IR Guidance (2/18/1997)
SUPAC-IR/MR: Immediate Release and Modified Release Solid Oral Dosage Forms Manufacturing Equipment Addendum (Issued 1/1999, Posted 2/25/1999)
SUPAC-MR: Modified Release Solid Oral Dosage Forms Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation (Issued 10/6/1997, Posted 10/6/1997)
SUPAC-SS: Nonsterile Semisolid Dosage Forms; Scale-Up and Post-Approval Changes: Chemistry, Manufacturing and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation (Issued 5/1997; Posted 6/16/1997)
Reviewer Guidance, Validation of Chromatographic Methods
Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products
Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances
Submitting Documentation for the Manufacturing of and Controls for Drug Products* (Issued 2/1987, Posted 3/2/1998)
Submitting Documentation for the Stability of Human Drugs and Biologics* (Issued 2/1987, Posted 3/2/1998)
Submitting Samples and Analytical Data for Methods Validation
Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances

Chemistry (Draft)

Analytical Procedures and Methods Validation. (Issued 8/2000, Posted 8/30/2000)
Comparability Protocols—Chemistry, Manufacturing, and Controls Information (Issued 2/2003, Posted 2/20/2003)
Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals (Posted 9/11/2003)
Drug Product: Chemistry, Manufacturing, and Controls Information (Issued 1/2003, Posted 1/28/2003)
Drug Substance: Chemistry, Manufacturing, and Controls Information (Issued 1/2004, Posted 1/6/2004)
Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations (7/24/1999)
Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products (Issued 11/13/1998, Posted 11/19/1998, Posted 9/27/1999)
Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation. (Issued 7/2002, Posted 8/20/2002)
Stability Testing of Drug Substances and Drug Products (Issued 6/5/1998, Posted 6/8/1998)
SUPAC-SS: Nonsterile Semisolid Dosage Forms Manufacturing Equipment Addendum (Issued 12/1998, Posted 1/5/1999)

Clinical/Antimicrobial

Antiretroviral Drugs Using Plasma HIV RNA Measurements—Clinical Considerations for Accelerated and Traditional Approval (Issued 10/2002, Posted 10/31/2002)
Clinical Development and Labeling of Anti-Infective Drug Products (Issued 10/1992, Posted 3/2/1998, Revised 2/12/2001)
Clinical Evaluation of Anti-Infective Drugs (Systemic) (Issued 9/77, Posted 3/2/1998)

Clinical/Antimicrobial (Draft)

Acute Bacterial Exacerbation of Chronic Bronchitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Acute Bacterial Meningitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Acute Bacterial Sinusitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Acute or Chronic Bacterial Prostatitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Acute Otitis Media—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Antiviral Drug Development—Conducting Virology Studies and Submitting the Data to the Agency (Issued 5/24/2005, Posted 5/24/2005)
Bacterial Vaginosis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment (Issued 10/1999, Posted 10/18/1999)
Community-Acquired Pneumonia—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Complicated Urinary Tract Infections and Pyelonephritis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Developing Antimicrobial Drugs—General Considerations for Clinical Trials (Issued 7/22/1998, Posted 7/22/1998)
Empiric Therapy of Febrile Neutropenia—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Evaluating Clinical Studies Of Antimicrobials In The Division Of Anti-Infective Drug Products (2/18/1997)
Inhalational Anthrax (Post Exposure)—Developing Antimicrobial Drugs (Issued 3/15/2002, Posted 3/15/2002)
Lyme Disease—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Nosocomial Pneumonia—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Role of HIV Drug Resistance Testing in Antiretroviral Drug Development (Issued 11/26/04, Posted 11/26/04)
Secondary Bacterial Infections of Acute Bronchitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Streptococcal Pharyngitis and Tonsillitis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Uncomplicated and Complicated Skin and Skin Structure Infections—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Uncomplicated Gonorrhea—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Uncomplicated Urinary Tract Infections—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)
Vaccinia Virus—Developing Drugs to Mitigate Complications from Smallpox Vaccination (Posted 3/8/2004)
Vulvovaginal Candidiasis—Developing Antimicrobial Drugs for Treatment (Issued 7/22/1998, Posted 7/22/1998)

Clinical/Medical

Acceptance of Foreign Clinical Studies (Posted 3/12/2001)
Available Therapy (Posted 7/22/2004)
Calcium DTPA and Zinc DTPA Drug Products—Submitting a New Drug Application (Posted 8/13/2004)
Cancer Drug and Biological Products—Clinical Data in Marketing Applications (Posted 10/11/2001)
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA) (Issued 1/1999, Posted 2/16/1999)
Clinical Development Programs for MDI and DPI Drug Products (Issued 9/19/1994, Posted 3/2/1998)
Clinical Evaluation of Analgesic Drugs (Withdrawn per August 5, 2003, Federal Register Notice)
Clinical Evaluation of Antacid Drugs (Withdrawn per July 20, 2004, Federal Register notice.)
Clinical Evaluation of Anti-Inflammatory and Antirheumatic Drugs (adults and children)
Clinical Evaluation of Antianxiety Drugs (Issued 9/77, Posted 3/2/1998)
Clinical Evaluation of Antidepressant Drugs (Issued 9/77, Posted 3/2/1998)
Clinical Evaluation of Antidiarrheal Drugs (Withdrawn per July 20, 2004, Federal Register notice.)
Clinical Evaluation of Antiepileptic Drugs (adults and children) (Issued 1/1981, Posted 3/2/1998)
Clinical Evaluation of Gastric Secretory Depressant (GSD) Drugs (Withdrawn per July 20, 2004, Federal Register notice.)
Clinical Evaluation of General Anesthetics (Issued 5/1982, Posted 3/2/1998)
Clinical Evaluation of Hypnotic Drugs (Issued 9/77, Posted 3/2/1998)
Clinical Evaluation of Laxative Drugs (Withdrawn per July 20, 2004, Federal Register notice.)
Clinical Evaluation of Local Anesthetics (Posted 3/2/1998)
Clinical Evaluation of Psychoactive Drugs in Infants and Children (Posted 3/2/1998)
Clinical Evaluation of Radiopharmaceutical Drugs (Withdrawn per July 20, 2004, Federal Register notice.)
Collection of Race and Ethnicity Data in Clinical Trials (Issued 9/16/2005, Posted 9/16/2005)
Content and Format for Pediatric Use Supplements
Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products
Developing Medical Imaging Drug and Biological Products
  Part 1: Conducting Safety Assessments (Issued 6/17/2004, Posted 6/17/2004)
  Part 2: Clinical Indications (Issued 6/17/2004, Posted 6/17/2004)
  Part 3: Design, Analysis, and Interpretation of Clinical Studies (Issued 6/17/2004, Posted 6/17/2004)
Development and Use of Risk Minimization Action Plans (Issued 3/24/2005, Posted 3/24/2005)
Establishing Pregnancy Exposure Registries (Issued 8/2002, Posted 9/20/2002)
Evaluating the Risks of Drug Exposure in Human Pregnancies (Issued 4/27/2005, Posted 4/27/2005)
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products (Issued 12/1998, Posted 2/2/1999, posted 9/14/1999)
FDA Requirements for Approval of Drugs to Treat Non-Small Cell Lung Cancer (Posted 3/2/1998)
FDA Requirements for Approval of Drugs to Treat Superficial Bladder Cancer (Withdrawn per July 20, 2004, Federal Register notice.)
Format and Content of the Clinical and Statistical Sections of an Application (Issued 7/1988, Posted 5/21/1997)
Format and Content of the Summary for New Drug and Antibiotic Applications* (Issued 2/1987, Posted 3/2/1998)
Formatting, Assembling and Submitting New Drug and Antibiotic Applications* (Issued 2/1987, Posted 3/2/1998)
General Considerations for the Clinical Evaluation of Drugs
General Considerations for the Clinical Evaluation of Drugs in Infants and Children (Issued 9/77, Posted 3/2/1998)
Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment (Issued 3/24/2005, Posted 3/24/2005)
Guidance for the Development of Vaginal Contraceptive Drugs (NDA) (Posted 3/2/1998)
Information Sheet Guidance for Sponsors, Clinical Investigators, and IRBs: Waiver of IRB Requirements for Drug and Biological Product Studies (Issued 1/2006)
IND Exemptions for Studies of Lawfully Marketed Drug or Biological Products for the Treatment of Cancer (Revised 1/15/2004, Posted 1/15/2004)
Internal Radioactive Contamination—Development of Decorporation Agents (Issued 3/1/2006, Posted 3/1/2006)
Integration of Dose-Counting Mechanisms into MDI Drug Products (Issued 3/2003, Posted 3/12/2003)
Levothyroxine Sodium Tablets—In Vivo Pharmacokinetic and Bioavailability Studies and In Vitro Dissolution Testing (Issued 2/2001, Posted 3/8/2001)
Oncologic Drugs Advisory Committee Discussion on FDA Requirements for Approval of New Drugs for Treatment of Ovarian Cancer (Posted 3/2/1998)
Oncologic Drugs Advisory Committee Discussion on FDA Requirements or Approval of New Drugs for Treatment of Colon and Rectal Cancer (Posted 3/2/1998)
Premarketing Risk Assessment (Issued 3/24/2005; Posted 3/24/2005)
Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report (Issued 8/27/1997, Posted 8/27/1997)
Postmarketing Reporting of Adverse Drug Experiences (Issued 3/1992, Posted 3/2/1998)
Preparation of Investigational New Drug Products (Human and Animal) (Issued 11/1992, Posted 3/2/1998)
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products (Issued 5/14/1998, Posted 5/14/1998)
Prussian Blue Drug Products—Submitting a New Drug Application (Issued 1/2003, Posted 2/4/2003)
Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs (Issued 7/22/1993, Posted 3/2/1998)
Study of Drugs Likely to be used in the Elderly (Issued 11/1989, Posted 3/2/1998)
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications (Issued 8/1999, Posted 9/13/1999)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

The Use of Clinical Holds Following Clinical Investigator Misconduct

Clinical/Medical (Draft)

Acne Vulgaris: Developing Drugs for Treatment (Issued 9/16/2005, Posted 9/16/2005)
Allergic Rhinitis: Clinical Development Programs for Drug Products (Issued 6/2000, Posted 6/20/2000)
Chronic Cutaneous Ulcer and Burn Wounds—Developing Products for Treatment (Issued 6/2000, Posted 6/27/2000)
Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis (Issued 7/07/1999, Posted 7/14/1999)
Clinical Evaluation of Lipid-Altering Agents (Issued 10/1990, Posted 2/18/1998)
Clinical Evaluation of Weight-Control Drugs (9/24/1996, Posted 2/18/1998)
Clinical Trial Endpoints for the Approval of Cancer Drugs and Biologics (Issued 4/1/2005, Posted 4/1/2005)
Development of Parathyroid Hormone for the Prevention and Treatment of Osteoporosis (Issued 5/2000, Posted 6/13/2000)
Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals (Issued 9/6/2002)
Estrogen and Estrogen/Progestin Drug Products to Treat Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommendations for Clinical Evaluation (Issued 1/2003, Posted 1/30/2003)
Evaluation of the Effects of Orally Inhaled and Intranasal Corticosteroids on Growth in Children (Posted 11/6/2001)
Exercise-Induced Bronchospasm (EIB)—Development of Drugs to Prevent EIB (Issued 2/2002, Posted 2/19/2002)
Exocrine Pancreatic Insufficiency Drug Products—Submitting NDAs (Posted 4/27/2004)
Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment (Issued 5/2000, Posted 5/18/2000)
Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention (Issued June 24, 2005, Posted June 27, 2005)
Guidance for Clinical Trial Sponsors On the Establishment and Operation of Clinical Trial Data Monitoring Committees (Issued 12/01/2005, Posted 2/07/2006)
Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research (3/31/2000)
Inhalation Drug Products Packaged in Semipermeable Container Closure Systems (Issued 7/2002, Posted 7/25/2002)
OTC Treatment of Herpes Labialis with Antiviral Agents (Issued 3/8/2000, Posted 3/8/2000)
Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims (Issued 2/2/2006), Posted 2/2/2006)
Pediatric Oncology Studies In Response to a Written Request (Issued 6/2000, Posted 6/19/2000)
Preclinical and Clinical Evaluation of Agents Used in the Prevention or Treatment of Postmenopausal Osteoporosis (Issued 4/1994, Posted 2/18/1998)
Recommendations for Complying with the Pediatric Rule (21 CFR 314.55(a) and 601.27(a)) (Posted 12/1/2000)
Systemic Lupus Erythematosus—Developing Drugs for Treatment (Issued 3/28/2005, Posted 3/28/2005)

Clinical Pharmacology

Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro (Issued 4/1997, Posted 4/8/1997)
Exposure-Response Relationships—Study Design, Data Analysis, and Regulatory Applications (Posted 5/5/2003)
Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application* (Issued 2/1987, Posted 3/2/1998)
In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling (Issued 11/24/1999, Posted 11/24/1999)
Pharmacokinetics in Patients with Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling (Posted 5/30/2003)
Pharmacokinetics in Patients with Impaired Renal Function (Issued 5/14/1998, Posted 5/14/1998)
Population Pharmacokinetics (Issued 2/1999, Posted 2/10/1999)

Clinical Pharmacology (Draft)

Clinical Lactation Studies—Study Design, Data Analysis, and Recommendations for Labeling (Issued 2/7/05, Posted 2/8/05)
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products (Issued 11/1998, Posted 11/12/1998)
Pharmacokinetics in Pregnancy—Study Design, Data Analysis, and Impact on Dosing and Labeling (Issued 10/29/2004, Posted 10/29/2004)

Combination Products (Drug/Device/Biologic)

Draft and Final guidances can be found on the Office of Combination Products web site.

Compliance

A Review of FDA's Implementation of the Drug Export Amendments of 1986 (Issued 11/1989, Posted 3/2/1998)
Compressed Medical Gases (Issued 2/1989, Posted 3/10/1997)
Computerized Systems Used in Clinical Trials (Issued 4/1999, Posted 5/11/1999)
General Principles of Process Validation
Good Laboratory Practice Regulations Questions and Answers (Posted 3/2/1998)
Guidance for Hospitals, Nursing Homes, and Other Health Care Facilities—FDA Public Health Advisory (Issued and Posted 4/5/2001)
Guideline for Validation of Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices (Posted 3/2/1998)
Expiration Dating and Stability Testing of Solid Oral Dosage Form Drugs Containing Iron (Issued 6/27/1997, Posted 6/27/1997)
Monitoring of Clinical Investigations (Posted 3/2/1998)
Nuclear Pharmacy Guideline Criteria for Determining When to Register as a Drug Establishment (Posted 3/2/1998)
Pharmacy Compounding—Compliance Policy Guide (Issued 5/2002, Posted 3/12/2004)
Possible Dioxin/PCB Contamination of Drug and Biological Products (Issued 8/23/1999, Posted 8/23/1999)
Prescription Drug Marketing Act—Donation of Prescription Drug Samples to Free Clinics (Issued 3/2006, Posted 3/13/2006)
Street Drug Alternatives (Issued 3/2000, Posted 3/31/2000)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Compliance (Draft)

Bar Code Label Requirements—Questions and Answers. (Issued 6/7/2005, Posted 6/7/2005)
Computerized Systems Used in Clinical Trials (Posted 9/29/2004)
Current Good Manufacturing Practice for Medical Gases (Posted 5/6/2003)
Expiration Dating of Unit-Dose Repackaged Drugs: Compliance Policy Guide (5/27/2005)
Guidance for IRBs, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research (21 CFR 50.24) Draft released for comment 3/30/2000 (5/12/2000)
Investigating Out of Specification (OOS) Test Results for Pharmaceutical Production (Issued 9/30/1998, Posted 9/30/1998)
Manufacturing, Processing, or Holding Active Pharmaceutical Ingredients (Issued 4/17/1998, Posted 4/17/1998)
Marketed Unapproved Drugs—Compliance Policy Guide (Issued 10/15/2003, Posted 10/17/2003)
PET Drug Products—Current Good Manufacturing Practice (CGMP) (Issued 9/15/2005, Posted 9/15/2005)

Drug Safety

Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (Issued 2/2005, Posted 2/2005)

Drug Safety Draft

FDA's ''Drug Watch'' for Emerging Drug Safety Information (Issued 5/5/2005; Posted 5/5/2005)
Questions and Answers (Qs & As)

Electronic Submissions

Part 11, Electronic Records; Electronic Signatures—Scope and Application (Posted 9/3/2003)
Providing Regulatory Submissions in Electronic Format—ANDAs (Issued 6/2002, Posted 6/27/2002)
Providing Regulatory Submissions in Electronic Format—Content of Labeling (Issued 4/20/2005, Posted 4/20/2005)
Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications. To ensure you have the most recent versions of the specifications referenced in this document, check the appropriate center's guidance Web page. For CBER, this Web site is *http://www.fda.gov/cber/esub/esub.htm*. For CDER, this Web site is *http://www.fda.gov/cder/regulatory/ersr/ectd.htm*. (Issued 10/18/2005, Posted 10/18/2005)
Regulatory Submissions in Electronic Format; General Considerations (Issued 1/1999, Posted 1/27/1999)
Regulatory Submissions in Electronic Format; New Drug Applications (Issued 1/1999, Posted 1/27/1999)
SPL Standard for Content of Labeling Technical Qs & As (Issued 12/2005, Posted 12/8/2005)
Example of an Electronic New Drug Application Submission (Posted 2/17/1999).

Electronic Submissions Draft

Providing Regulatory Submissions in Electronic Format—Annual Reports for NDAs and ANDAs (Posted 8/27/2003)
Providing Regulatory Submissions in Electronic Format—General Considerations (Issued 10/2003, Posted 10/22/2003)
Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports (Issued 5/2001, Posted 5/3/2001)
Providing Regulatory Submissions in Electronic Format—Postmarketing Periodic Adverse Drug Experience Reports (Posted 6/23/3003)
Providing Regulatory Submissions in Electronic Format—Prescription Drug Advertising and Promotional Labeling (Issued 1/2001, Posted 1/30/2001)

Generics

180-Day Exclusivity When Multiple ANDAs Are Submitted on the Same Day (Issued 7/2003, Posted 7/31/2003)
Alternate Source of the Active Pharmaceutical Ingredient in Pending ANDAs (Posted 12/12/2000)
ANDA's: Impurities in Drug Substances (Issued 11/1999, Posted 12/2/1999)
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (Posted 3/27/2000)
Handling and Retention of BA and BE Testing Samples (5/25/2004)
Letter announcing that the OGD will now accept the ICH long-term storage conditions as well as the stability studies conducted in the past. (Posted 3/2/1998)
Letter describing efforts by the CDER and the ORA to clarify the responsibilities of CDER chemistry review scientists and ORA field investigators in the new and abbreviated drug approval process in order to reduce duplication or redundancy in the process (Posted 3/2/1998)
Letter on incomplete Abbreviated Applications, Convictions Under GDEA, Multiple Supplements, Annual Reports for Bulk Antibiotics, Batch Size for Transdermal Drugs, Bioequivalence Protocols, Research, Deviations from OGD Policy (Posted 3/2/1998)
Letter on the Provision of new information pertaining to new bioequivalence guidelines and refuse-to-file letters (Posted 3/2/1998)
Letter on the provision of new procedures and policies affecting the generic drug review process (Posted 3/2/1998)
Letter on the request for cooperation of regulated industry to improve the efficiency and effectiveness of the generic drug review process, by assuring the completeness and accuracy of required information and data submissions (Posted 3/2/1998)
Letter on the response to 12/20/1984 letter from the Pharmaceutical Manufacturers Association about the Drug Price Competition and Patent Term Restoration Act (Posted 3/2/1998)
Letter to all ANDA and AADA applicants about the Generic Drug Enforcement Act of 1992 (GDEA), and the Office of Generic Drugs intention to refuse-to-file incomplete submissions as required by the new law (Posted 3/2/1998)
Letter to regulated industry notifying interested parties about important detailed information regarding labeling, scale-up, packaging, minor/major amendment criteria and bioequivalence requirements (Posted 3/2/1998)
Major, Minor, and Telephone Amendments to Abbreviated New Drug Applications (Issued 12/2001, Posted 12/20/2001)
Potassium Chloride Modified-Release Tablets and Capsules: In Vivo Bioequivalence and In Vitro Dissolution Testing (Issued 10/25/2005; Posted 10/25/2005)
Revising ANDA Labeling Following Revision of the RLD Labeling (Issued 4/26/2000, 4/26/2000)
Variations in Drug Products that May Be Included in a Single ANDA (Issued 12/1998, Posted 1/26/1999)

CDER GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Generics (Draft)

ANDAs: Impurities in Drug Products (Issued 8/26/2005, Posted 8/26/2005)
ANDAs: Impurities in Drug Substances (Issued 1/28/2005, Posted 1/28/2005)
ANDAs: Pharmaceutical Solid Polymorphism (Issued 12/17/2004, Posted 12/17/2004)
Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers (Issued 10/2004, Posted 11/3/2004)

Good Review Practices (GRPs)

Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (Posted 2/18/2005)
Pharmacology/Toxicology Review Format (Posted 5/9/2001)

Good Review Practices (GRPs) (Draft)

Industry Letters

Continuation of a series of letters communicating interim and informal generic drug policy and guidance. Availability of Policy and Procedure Guides, and further operational changes to the generic drug review program (Posted 3/2/1998)
Fifth of a series of letters providing informal notice about the Act, discussing the statutory mechanism by which ANDA applicants may make modifications in approved drugs where clinical data is required (Posted 3/2/1998)
Fourth of a series of letters providing informal notice to all affected parties about policy developments and interpretations regarding the Act. Three year exclusivity provisions of Title I (Posted 3/2/1998)
Implementation of the Drug Price Competition and Patent Term Restoration Act. Preliminary Guidance (Posted 3/2/1998)
Implementation Plan USP injection nomenclature (Posted 3/2/1998)
Seventh of a series of letters about the Act providing guidance on the ''130-day exclusivity'' provision of section 505(j)(4)(B)(iv) of the FD&C (Posted 3/2/1998)
Sixth of a series of informal notice letters about the Act discussing 3- and 5-year exclusivity provisions of sections 505(c)(3)(D) and 505(j)(4)(D) of the FD&C Act (Posted 3/2/1998)
Supplement to 10/11/1984 letter about policies, procedures and implementation of the Act (Q&A format) (Posted 3/2/1998)
Third of a series of letters regarding the implementation of the Act (Posted 3/2/1998)
Year 2000 Letter from Dr. Janet Woodcock (10/19/98)

International Conference on Harmonisation

Safety
- S1A The Need for Long-term Rodent Carcinogenicity Studies of Pharmaceuticals
- S1B Testing for Carcinogenicity of Pharmaceuticals (Issued 2/28/1998, Posted 3/24/1998)
- S1C Dose Selection for Carcinogenicity Studies of Pharmaceuticals
- S1C(R) Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes (Issued 12/4/1997, Posted 12/11/1997)
- S2A Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals
- S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals (Issued 11/21/1997, Posted 5/4/1998)
- S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies
- S3B Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies
- S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing) Posted 6/25/99
- S5A Detection of Toxicity to Reproduction for Medicinal Products (Issued 9/1994, Posted 4/23/1997)
- S5B Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility
- S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals (Issued 11/1997, Posted 11/18/1997)
- S7A Safety Pharmacology Studies for Human Pharmaceuticals (Issued 7/2001, Posted 7/12/2001)
- S7B Nonclinical Evaluation of the Potential for Delayed Ventricular Repolarization (QT Interval Prolongation) by Human Pharmaceuticals (Issued 10/19/2005, Posted 10/19/2005).

Joint Safety/Efficacy (Multidisciplinary)
- M2 eCTD: Electronic Common Technical Document Specification (Posted 4/1/2003)
  - M2: eCTD Specification Questions and Answers and Change Requests (Posted 3/14/05)
    - Companion Document: Current Q & As and Change Requests (Issued 1/6/2006; Posted 1/6/2006)
- M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals (Issued 11/1997, Posted 11/25/1997)
- M4: Common Technical Document for the Registration of Pharmaceuticals for Human Use (Posted 10/15/2001)
  - M4: Organization of the CTD
    - M4 Granularity Annex (Issued 10/18/2005, Posted 10/18/2005)
    - M4: The CTD—General Questions and Answers (Issued 12/04, Posted 12/22/2004)
  - M4: The CTD—Quality
    - M4: The CTD—Quality Questions and Answers /Location Issues (Issued 6/2004, Posted 6/8/2004)
  - M4: The CTD—Efficacy
    - M4: The CTD—Efficacy Questions and Answers (Issued 12/2004, Posted 12/22/2004)
  - M4: The CTD—Safety
  - M4: The CTD—Safety Appendices
    - M4: The CTD—Safety Questions and Answers (Issued 2/2003, Posted 2/4/2003)

Efficacy
- E1A The Extent of Population Exposure to Assess Clinical Safety: For Drugs Intended for Long-term Treatment of Non-Life-Threatening Conditions
- E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting
- E2B International Conference on Harmonisation; Guidance on Data Elements for Transmission of Individual Case Safety Reports (Issued 1/15/1998, Posted 1/15/1998)
  - E2BM Data Elements for Transmission Of Individual Case Safety Reports (Issued 4/2002, Posted 4/4/2002)

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E2B(M) Questions and Answers (Revised 3/09/2005, Posted, 3/16/2005)
E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs (Issued 5/19/1997, Posted 3/19/1998)
E2C Addendum to ICH E2C Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs (Posted 2/5/2004)
E2E Pharmacovigilance Planning (Issued 3/31/05; Posted 3/31/05)
E3 Structure and Content of Clinical Study Reports
E4 Dose-Response Information to Support Drug Registration
E5 Ethnic Factors in the Acceptability of Foreign Clinical Data
E5 Questions and Answers (Issue 6/2004, Posted 6/4/2004)
E6 Good Clinical Practice: Consolidated Guideline Spanish Version (Issued 5/9/1997, Posted 3/19/1998)
E7 Studies in Support of Special Populations: Geriatrics
E8 General Considerations for Clinical Trials (Issued 12/1997, Posted 12/17/1997)
E9 Statistical Principles for Clinical Trials (9/1/1998)
E10 Choice of Control Group and Related Issues in Clinical Trials (Issued 5/2001, Posted 5/11/2001)
E11 Clinical Investigation of Medicinal Products in the Pediatric Population (Issued 12/2000, Posted 12/14/2000)
E14 Clinical Evaluation of QT/QTc Interval Prolongation and Proarrhythmic Potential for Non-Antiarrhythmic Drugs (Issued 10/19/2005, Posted 10/19/2005)

Quality

Q1A(R2) Stability Testing of New Drug Substances and Products (Issued 11/2003, Posted 11/20/2003)
Q1B Photostability Testing of New Drug Substances and Products (Issued 11/1996, Reposted 7/7/1998)
Q1C Stability Testing for New Dosage Forms (Issued 5/9/1997, Posted 3/19/1998)
Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products (Issued 1/2003, Posted 1/15/2003)
Q1E Evaluation of Stability Data (Issued 6/2004, Posted 6/7/2004)
Q1F Stability Data Package for Registration Applications in Climatic Zones III and IV, revision 1 (7/1/2004)
Q2A Text on Validation of Analytical Procedures
Q2B Validation of Analytical Procedures: Methodology (Issued 5/19/1997, Posted 3/19/1997)
Q3A Impurities in New Drug Substances (Issued 2/10/2003, Posted 2/10/2003)
Q3B(R) Impurities in New Drug Products (Issued 11/2003, Posted 11/13/2003)
Q3C Impurities: Residual Solvents or Adobe Acrobat version (Issued 12/24/1997, Posted 12/30/1997)
Q3C Tables and List (Posted 11/12/2003)
Appendix 4, Appendix 5, and Appendix 6 (Appendices were issued with the Q3C draft guidance documents)
Maintenance Procedures for Updating (Posted 2/11/2002)
Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin (Posted 9/1998)
Q5B Quality of Biotechnological Products: Analysis of the Expression Construct in Cells Used for Production of r-DNA Derived Protein Products
Q5C Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products
Q5D Quality of Biotechnological/Biological Products: Derivation and Characterization of Cell Substrates Used for Production of Biotechnological/Biological Products; Availability (Issued 9/21/1998, Posted 9/21/1998)
Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process (Issued 6/2005, Posted 6/29/2005)
Q6A International Conference on Harmonisation; Guidance on Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances. (12/29/2000)
Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products (Issued 8/1999, Posted 12/14/2001)
Q7A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients (Issued 8/2001, Posted 9/24/2001]

International Conference on Harmonisation (Draft)

Efficacy
E2B(R) Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports (Issued 9/30/2005, Posted 9/30/2005)
E2D Postapproval Safety Data Management: Definitions and Standards for Expedited Reporting (Posted 9/12/2003)
Principles for Clinical Evaluation of New Antihypertensive Drugs. (Issued 8/2000, Posted 8/8/2000)
Joint Safety/Efficacy (Multidisciplinary) (Draft)
International Conference on Harmonisation; Draft Guidance on M5 Data Elements and Standards for Drug Dictionaries (Issued 9/2005, Posted 9/2/2005)
Submitting Marketing Applications According to the ICH/CTD Format: General Considerations (Issued 9/2001, Posted 9/5/2001)
Quality
Q8 Pharmaceutical Development (Issued 2/7/2005, Posted 2/8/2005)
Q9 Quality Risk Management (Issued 8/5/2005, Posted 8/5/2005)
Safety
S8 Immunotoxicity Studies for Human Pharmaceuticals (Issued 2/7/05, Posted 2/8/05)

Investigational New Drug Applications

Content and Format of Investigational New Drug Applications (INDs) for Phase 1 Studies of Drugs

Labeling

Adverse Reactions Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (Issued 1/18/2006; Posted 1/18/2006)
Clinical Studies Section of Labeling for Human Prescription Drug and Biological Products—Content and Format (Issued 1/18/2006; Posted 1/18/2006)
Content and Format for Geriatric Labeling (Issued 10/2001, Posted 10/4/2001)

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Labeling (Draft)

Labeling for Combined Oral Contraceptives (Issued 3/2/2004, Posted 3/4/2004)
Labeling for Human Prescription Drug and Biological Products—Implementing the New Content and Format Requirements (Issued 1/18/2006; Posted 1/18/2006)
Labeling Guidance for OTC Topical Drug Products for the Treatment of Vaginal Yeast Infections (Vulvovaginal Candidiasis) (Issued 6/1998, Posted 7/20/1998)
Noncontraceptive Estrogen Drug Products for the Treatment of Vasomotor Symptoms and Vulvar and Vaginal Atrophy Symptoms—Recommended Prescribing Informtion for Health Care Providers and Patient Labeling (Issued 11/15/2005, Posted 11/15/2005)
Referencing Discontinued Labeling for Listed Drugs in Abbreviated New Drug Applications (Issued 10/2000, Posted 10/25/2000)
Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format (Issued 1/18/2006; Posted 1/18/2006)

Microbiology

Format and Content of the Microbiology Section of an Application*

Modernization Act of 1997

Changes to an Approved NDA or ANDA (Issued 4/2004, Posted 4/7/2004)
Classifying Resubmissions in Response to Action Letters (Issued 5/14/1998, Posted 5/14/1998)
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act (Issued 11/1998, Posted 11/20/1998)
Fast Track Drug Development Programs—Designation, Development, and Application Review (Posted 7/22/2004)
Appendix 2; Appendix 3 consisting of Mapp 6020.3 and SOPP 8405; and Appendix 4 [Appendices are scanned copies, which will be replaced by final versions] (Issued 11/17/1998, Posted 11/17/1998)
Formal Dispute Resolution: Appeals Above the Division Level (Issued 2/2000, Posted 3/6/2000)
Formal Meetings With Sponsors and Applicants for PDUFA Products (Issued 2/2000, Posted 3/6/2000)
Implementation of Section 120 of the Food and Drug Administration Modernization Act of 1997—Advisory Committees (Issued 10/1998, Posted 11/02/98)
Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements (Issued 7/1998, Posted 7/20/98)
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (Issued 3/2002, Posted 3/18/2002)
National Uniformity for Nonpresciption Drugs—Ingredient Listing for OTC Drugs (Issued 4/1998, Posted 5/5/1998)
Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products (Issued 5/14/1998, Posted 5/14/1998)
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act (Issued 9/1999, Posted 10/4/1999)
Frequently Asked Questions on Pediatric Exclusivity (505A), The Pediatric ''Rule,'' and Their Interaction (Posted 7/27/1999)
Repeal of Section 507 of the Federal Food, Drug and Cosmetic Act (Revised 5/1998, Posted 6/12/1998)
Standards for Prompt Review of Efficacy Supplements (Issued 5/15/1998, Posted 5/15/1998)
Submission of Abbreviated Reports and Synopses in Support of Marketing Applications (Issued 8/1998, Posted 9/15/98)
Submitting and Reviewing Complete Responses to Clinical Holds (Revised) (Issued 10/2000, Posted 10/25/2000
Women and Minorities Guidance Requirements (Issued 7/20/1998, Posted 11/25/1998)

Modernization Act of 1997 (Draft)

Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (Issued 1/2004, Posted 1/27/2004)
PET Drug Applications—Content and Format for NDAs and ANDAs (Issued 3/7/2000, Posted 3/7/2000)
Sample formats for chemistry, manufacturing, and controls sections
Sample formats for labeling
Sample formats for Form FDA 356h
Sample formats for user fee Form FDA 3397
Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997 (Posted 4/4/2001)

Over-the-Counter (OTC) Guidances

Enforcement Policy on Marketing OTC Combination Products (CPG 7132b.16) (Posted 3/2/1998)
General Guidelines for OTC Combination Products (Posted 3/2/1998)
Labeling OTC Human Drug Products Using a Column Format (Issued 12/2000, Posted 12/18/2000)
Labeling OTC Human Drug Products Updating Labeling in RLDs and ANDAs
Example Drug Facts Labels
Acetaminophen 120 mg in a Suppository Dosage Form
Acetaminophen 325 mg in a Suppository Dosage Form
Acetaminophen 650 mg in a Suppository Dosage Form
Cimetidine 200 mg in a Tablet Dosage Form
Clemastine Fumerate 1.34 mg in a Tablet Dosage Form
Doxylamine Succinate 25 mg Tablet Dosage Form
Ibuprofen 200 mg in a Tablet/Capsule Dosage Form
Loperamide HCl in a Liquid Dosage Form
Loperamide HCl in a Tablet/Caplet Dosage Form
Miconazole Nitrate Vaginal Products
Minoxidil Topical Solution 2% for Men and Women
Minoxidil Topical Solution 5% for Men
Naproxen Sodium 220 mg in a Tablet/Caplet/Gelcap Dosage Form
Pseudoephedrine HCl Extended-Release Tablets 120 mg

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Upgrading Category III Antiperspirants to Category I (43 FR 46728–46731) (Posted 3/2/1998)

Over-the-Counter (OTC) Draft

Labeling OTC Human Drug Products Questions and Answers (Issued 1/2005, Posted 1/12/05
Labeling OTC Human Drug Products—Submitting Requests for Exemptions and Deferrals (Issued 12/2000, Posted 12/18/2000)
Labeling OTC Human Drug Products (Small Entity Compliance Guide) (Issued 12/2004, Posted 6/8/2005)
Labeling OTC Human Drug Products Updating Labeling in ANDAs (2/21/2001)
Additional examples 1 (3/19/2001)
Additional examples 2 (3/26/2001)
Additional examples 3 (3/26/2001)
Time and Extent Applications (Issued 2/2004, Posted 2/11/2004)

Pharmacology/Toxicology

Carcinogenicity Study Protocol Submissions (Issued 5/22/2002)
Content and Format of INDs for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products
Developing Medical Imaging Drug and Biological Products
Part 1: Conducting Safety Assessments (Issued 6/17/2004, Posted 6/17/2004)
Estimating the Maximum Safe Starting Dose in Initial Clinical Trials for Therapeutics in Adult Healthy Volunteers (Issued 7/21/2005, Posted 7/21/2005.
Exploratory IND Studies (Issued 1/12/2006; Posted 1/12/2006)
Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application* (Posted 3/2/1998)
Immunotoxicology Evaluation of Investigational New Drugs (Issued 10/2002, Posted 10/31/2002)
Nonclinical Pharmacology/Toxicology Development of Topical Drugs Intended to Prevent the Transmission of Sexually Transmitted Diseases (STD) and/or for the Development of Drugs Intended to Act as Vaginal Contraceptives
Nonclinical Safety Evaluation of Pediatric Drug Products (Issued 2/14/2006, Posted 2/14/2006)
Nonclinical Studies for the Safety Evaluation of Pharmaceutical Excipients (Issued 05/18/2005, Posted 05/18/2005)
Photosafety Testing (Posted 5/7/2003)
Recommended Approaches to Integration of Genetic Toxicology Study Results (Issued 1/3/2006, Posted 1/3/2006).
Reference Guide for the Nonclinical Toxicity Studies of Antivial Drugs Indicated for the Treatment of N/A Non-Life Threatening Disease Evaluation of Drug Toxicity Prior to Phase I Clinical Studies (Posted 3/2/1998)
Single Dose Acute Toxicity Testing for Pharmaceuticals

Pharmacology/Toxicology Draft

Integration of Study Results to Assess Concerns about Human Reproductive and Developmental Toxicities (Issued 11/2001, Posted 11/9/2001)
Nonclinical Evaluation of Late Radiation Toxicity of Therapeutic Radiopharmaceuticals (Issued 6/17/2005; Posted 6/17/2005)
Nonclinical Safety Evaluation of Drug Combinations (Issued 1/26/05, Posted 1/26/05)
Safety Testing of Drug Metabolites (Issued 6/2005, Posted 6/3/2005)
Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals (Issued 5/2001, Posted 5/7/2001)

Procedural

180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (Issued 6/1998, Posted 6/22/1998)
Continuous Marketing Applications: Pilot 1—Reviewable Units for Fast Track Products Under PDUFA (Posted 10/1/2003)
Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA (Posted 10/1/2003)
Paperwork Reduction Act Burden Statement (Posted 7/27/2004)
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (Posted 3/27/2000)
Disclosure of Materials Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Convened by the Center for Drug Evaluation and Research Beginning on January 1, 2000 (Issued 11/1999, Posted 11/29/1999)
Drug Products Containing Ensulizole, Hypromellose, Meradimate, Octinoxate, and Octisalate—Labeling Enforcement Policy (Posted 6/3/2003)
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act (Issued 11/1998, Posted 11/20/1998)
Fast Track Drug Development Programs—Designation, Development, and Application Review (Posted 1/12/2006)
Appendix 2 ; Appendix 3 consisting of Mapp 6020.3 and SOPP 8405;and Appendix 4 [Appendices are scanned copies, which will be replaced by final versions 11/18] (Issued 11/17/1998, Posted 11/17/1998)
FDA Export Certicates (Issued 7/2004, Posted 7/13/2004)
Financial Disclosure by Clinical Investigators (3/27/2001)
Formal Dispute Resolution: Appeals Above the Division Level (Issued 2/2000, Posted 3/6/2000)
Formal Meetings With Sponsors and Applicants for PDUFA Products (Issued 2/2000, Posted 3/6/2000)
Good Review Management Principles and Practices for PDUFA Products (Issued 3/2005; Posted 3/30/2005)
Guidance for FDA Staff: The Leveraging Handbook; An Agency Resource for Effective Collaborations (Revised 6/2003)
Implementation of Section 120 of the Food and Drug Administration Modernization Act of 1997—Advisory Committees (Issued 10/1998, Posted 11/02/98)
Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements (Issued 7/1998, Posted 7/20/98)
Independent Consultants for Biotechnology Clinical Trial Protocols (Issued 8/18/2004, Posted 8/192/2004)
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (Issued 3/2002, Posted 3/18/2002)
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act (Issued 11/2001)
Levothyroxine Sodium Products Enforcement of August 14, 2001 Compliance Date and Submission of New Applications (Issued 7/2001, Posted 7/12/2001)

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National Uniformity for Nonpresciption Drugs—Ingredient Listing for OTC Drugs (Issued 4/1998, Posted 5/5/1998)
Pharmacogenomic Data Submissions (Issued 3/2005, Posted 3/22/2005)
Examples of Voluntary Submissions or Submissions Required Under 21 CFR 312, 314, or 601 (Issued 3/2005, Posted 3/22/2005)
Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies (Issued 12/2001, Posted 12/10/2001)
KI in Radiation Emergencies—Questions and Answers (Issued 12/20/2002, Posted 12/23/2002)
Potassium Iodide Tablets—Shelf Life Extension (Posted 3/8/2004)
Reduction of Civil Money Penalties for Small Entities (Issued 3/20/2001)
Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act (Issued 9/1999, Posted 10/4/1999)
Refusal to File (Issued 7/12/1993, Posted 11/26/99)
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Standards for Prompt Review of Efficacy Supplements (Issued 5/15/1998, Posted 5/15/1998)
Submitting and Reviewing Complete Responses to Clinical Holds (Revised) (Issued 10/2000, Posted 10/25/2000)

Procedural Draft

Applications Covered by Section 505(b)(2) (Issued 10/1999, Posted 12/7/1999)
Disclosing Information Provided to Advisory Committees in Connection with Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by the Center for Drug Evaluation and Research, Beginning on January 1, 2000 (Issued 12/1999, Posted 12/22/1999)
Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees (2/14/2002)
Emergency Use Authorization of Medical Products; Availability (Issued 7/5/2005; Posted 7/5/2005.
Fixed Dose Combination and Co-Packaged Drug Products for Treatment of HIV (5/17/2004)
Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (5/14/2001)
How to Comply with the Pediatric Research Equity Act (Posted 9/7/2005)
Independent Consultants for Biotechnology Clinical Trial Protocols (Posted 5/7/2003)
Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions (Issued 1/2004, Posted 1/27/2004)
PET Drug Applications—Content and Format for NDAs and ANDAs (Issued 3/7/2000, Posted 3/7/2000)
Sample formats for chemistry, manufacturing, and controls sections
Sample formats for labeling
Sample formats for Form FDA 356h
Sample formats for user fee Form FDA 3397
Postmarketing Safety Reporting for Human Drug and Biological Products Including Vaccines (Issued 3/2001, Posted 3/9/2001)
Submitting Debarment Certification Statements (Issued 10/2/98, Posted 10/2/98)
Submitting Marketing Applications According to the ICH/CTD Format: General Considerations (Issued 9/2001, Posted 9/5/2001)
The Use of Clinical Holds Following Clinical Investigator Misconduct (Issued 4/2002, Posted 8/26/2002)
Useful Written Consumer Medication Information (CMI) (Issued 5/25/2005, Posted 5/25/2005)
Using a Centralized IRB Review Process in Multicenter Clinical Trials (Issued 3/25/2005, Posted 3/25/2005)

Small Entity Compliance Guides

Sterility Requirement for Aqueous-Based Drug Products for Oral Inhalation—Small Entity Compliance Guide (Posted 11/7/2001)

Small Entity Compliance Guides (Draft)

Labeling OTC Human Drug Products (Small Entity Compliance Guide) (Issued 12/2004, Posted 6/8/2005)

User Fees

Classifying Resubmissions in Response to Action Letters (Issued 5/14/1998, Posted 5/14/1998)
Fees-Exceed-the-Costs Waivers Under the Prescription Drug User Fee Act (Issued 6/1999, Posted 6/25/99)
Guidance for Industry and FDA Staff: Application User Fees for Combination Products. (Issued 4/2005, Posted 5/3/2005)
Information Request and Discipline Review Letters Under the Prescription Drug User Fee Act (Issued 11/2001)
Submitting Separate Marketing Applications and Clinical Data for Purposes of Assessing User Fees (Issued 12/30/2004, Posted 12/30/2004)

User Fees (Draft)

Attachment G—Draft Interim Guidance Document for Waivers of and Reductions in User Fees (7/16/1993)
User Fee Waivers for FDC and Co-Packaged HIV Drugs for PEPFAR (Issued 4/15/2005, Posted 4/15/2005)

Also see Current Good Manufacturing Practice Regulations
Enforcement of the Postmarketing Adverse Drug Experience Reporting Regulations (Posted 8/11/1997)

IV. Center for Devices and Radiological Health (CDRH)

For information on a specific guidance document or to obtain a hard copy, contact: Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 1–800–638–2041 or 301–443–6597, *http://www.fda.gov/cdrh/guidance.html*.

The following is a list of CDRH guidance documents that have been withdrawn from January 5, 2005, to January 5, 2006.

Title of Document	Date of Issuance	Date of Withdrawal
Methods for Conducting Recall Effectiveness Checks	June 16, 1978	January 2006
Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver; Draft Guidance for Industry and FDA	March 1, 2001	September 7, 2005
Guidance for Industry; In Vitro Diagnostic C-Reactive Protein Immunological Test System	July 20, 1998	September 22, 2005
Guidance for Over-the-Counter (OTC) Ovulation Predictor 510(k)s	July 22, 2000	September 7, 2005
Draft Review Criteria for Nucleic Acid Amplification Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms	June 14, 1993	December 8, 2005
CDRH Interim Regulatory Policy for External Penile Rigidity Devices	September 10, 1997	January 2005
Guidance for Neurological Embolization Devices	November 1, 2000	January 2005
Class II Special Controls Guidance Document: Dental Bone Grafting Material Devices	Draft of this document was issued on June 30, 2004	Final issued on: April 28, 2005
Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices	Draft of this document was issued on February 25, 2004	Final issued on: December 29, 2004
Class II Special Controls Guidance Document: External Penile Rigidity Devices	Draft of this document was issued March 17, 2004	Final issued on: December 28, 2004

The following is a copy of a list of current CDRH guidance documents obtained from the FDA Web site as of March14, 2006.

CDRH GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

(1) A Guide for the Submission of Abbreviated Radiation Safety Reports on Image Receptor Support Devices for Mammographic X-Ray Systems 979 03/01/1996
(2) Abbreviated Reports on Radiation Safety of Non-Medical Ultrasonic Products 951 08/01/1995
(3) Compliance Program for Field Compliance Testing of Cabinet X-Ray Equipment (CP 7386.004); Final Guidance for Industry and FDA Staff 57 02/26/2001
(4) Compliance Program Guidance Manual: Field Implementation of the Sunlamp and Sunlamp Product Performance Standard, as amended; Final Guidance for Industry and FDA 75 10/06/2001
(5) Frequently Asked Questions (FAQs) on the Status of Reprocessed Single Use Devices (SUDs) that receive a Not Substantially Equivalent (NSE) Letter—Guidance for Industry and FDA Staff 1544 11/08/2004
(6) Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21-CFR 1020.40 241 02/01/1975
(7) Guidance on the Department of Defense Exemption from the FDA Performance Standard for Laser Products; Guidance for Industry and FDA 1412 07/12/2002
(8) Guide for Preparing Abbreviated Reports of Microwave and RF Emitting Electronic Products Intended for Medical Use 399 09/01/1996
(9) Guide for Preparing Annual Reports for Ultrasonic Therapy Products 261 09/01/1996
(10) Guide for Preparing Annual Reports on Radiation Safety Testing of Electronic Products (General) 243 10/01/1987
(11) Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps 263 09/01/1995
(12) Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamps and Sunlamp Products 262 09/01/1995
(13) Guide for Preparing Product Reports for Medical Ultrasound Products 960 09/01/1996
(14) Guide for Preparing Product Reports for Ultrasonic Therapy Products (physical therapy only) 249 08/01/1996
(15) Guide for Preparing Product Reports on Sunlamps and Sunlamp Products (21-CFR 1002) 279 09/01/1995
(16) Guide for Preparing Reports on Radiation Safety of Microwave Ovens 239 03/01/1985
(17) Guide for Submission of Information on Accelerators Intended to Emit X-Radiation Required Pursuant to 21-CFR 1002.10 235 04/01/1971
(18) Guide for Submission of Information on Analytical X-Ray Equipment Required Pursuant to 21-CFR 1002.10 240 04/30/1974
(19) Guide for Submission of Information on Industrial Radiofrequency Dielectric Heater and Sealer Equipment Pursuant to 21 CFR 1002.10 and 1002.12 (FDA 81–8137) 254 09/01/1980
(20) Guide for Submission of Information on Industrial X-Ray Equipment Required Pursuant to 21-CFR 1002.10 237 03/01/1973
(21) Information Requirements for Cookbooks and User and Service Manuals 697 10/31/1988
(22) Keeping Up With the Microwave Revolution (FDA Pub No. 91–4160) 356 03/01/1990
(23) Laser Light Show Safety—Who's Responsibility (FDA 86–8262) 13 05/01/1986
(24) Laser Products—Conformance with IEC 60825–1, Am.2 and IEC 60601–2–22; Final Guidance for Industry and FDA (Laser Notice 50) 1346 07/26/2001
(25) Letter to All Foreign Manufacturers and Importers of Electronic Products for Which Applicable FDA Performance Standards Exist 231 05/28/1981
(26) Policy on Maximum Timer Interval and Exposure Schedule for Sunlamp Products 342 08/21/1986
(27) Quality Control Guide for Sunlamp Products (FDA 88–8234) 270 03/01/1988
(28) Quality Control Practices for Compliance with the Federal Mercury Vapor Lamp Performance Standard 349 05/01/1980
(29) Reporting and Compliance Guide for Television Products including Product Report, Supplemental Report, Radiation Safety Abbreviated Report, Annual Report, Information and Guidance 260 10/01/1995
(30) Reporting Guide for Laser Light Shows and Displays (21-CFR1002) (FDA 88–8140) 251 09/01/1995

CDRH GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

(31) Reporting Guide for Product Reports on High Intensity Mercury Vapor Discharge Lamps (21 CFR 1002) 348 09/01/1995
(32) Reporting of New Model Numbers to Existing Model Families 675 06/14/1983
(33) Revised Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products (replaces FDA 82–8127) 264 09/01/1995
(34) Suggested State Regulations for Control of Radiation—Volume II Nonionizing Radiation—Lasers (FDA Pub No. 83–8220) 70 01/01/1982
(35) Wireless Medical Telemetry Risks and Recommendations 1173 09/27/2000
(36) Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products; Guidance for Industry and FDA CBER 1201 02/25/2003
(37) Compliance with Section 301 of the Medical Device User Fee and Modernization Act of 2002—Identification of Manufacturer of Medical Devices—Draft Guidance for Industry and FDA Staff CBER 1217 06/23/2003
(38) Draft Guidance for Industry: Drugs, Biologics, and Medical Devices Derived from Bioengineered Plants for Use in Humans and Animals CBER 09/06/2002
(39) Guidance for Industry: FDA Export Certificates CBER 1417 07/12/2004
(40) "Help-Seeking" and Other Disease Awareness Communications by or on behalf of Drug and Device Firms - Draft Guidance for Industry CBER CDER CDRH 02/10/2004
(41) Bundling Multiple Devices or Multiple Indications in a Single Submission—Guidance for Industry and FDA Staff CBER CDRH 1215 11/26/2003
(42) Expedited Review of Premarket Submissions for Devices—Guidance for Industry and FDA Staff CBER CDRH 108 11/26/2003
(43) FY 2005 MDUFMA Small Business Qualification Worksheet and Certification—Guidance for Industry and FDA CBER CDRH 2005 08/02/2004
(44) FY 2006 MDUFMA Small Business Qualification Worksheet and Certification—Guidance for Industry and FDA CBER CDRH 2006 08/17/2005
(45) Guidance for Industry and FDA Staff—Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use CBER CDRH 4444 11/30/2004
(46) Requests for Inspection by an Accredited Person Under the Inspection by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act of 2002—Gudiance for Industry, FDA Staff, and FDA-Accredited Third-Parties CBER CDRH 1532 09/15/2005
(47) Resolution of Disputes Concerning Payment or Refund of Medical Device User Fees Under MDUFMA—Guidance for Industry and FDA Staff CBER CDRH 1303 11/17/2004
(48) User Fees and Refunds for Premarket Approval Applications—Guidance for Industry and FDA Staff CBER CDRH 1224 11/24/2003
(49) User Fees and Refunds for Premarket Notification Submissions (510(k)s)—Guidance for Industry and FDA Staff CBER CDRH 1511 05/28/2004
(50) Acceptance of Foreign Clinical Studies; Guidance for Industry CDER 03/13/2001
(51) Clinical Development Programs for Drugs, Devices, and Biological Products Intended for the Treatment of Osteoarthritis CDER 2199 07/07/1999
(52) Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—General Considerations CDER 10/22/2003
(53) Guidance for Industry: Chronic Cutaneous Ulcer and Burn Wounds Developing Products for Treatment CDER 06/01/2000
(54) Guidance for Industry; Collection of Race and Ethnicity Data in Clinical Trials CDER 09/01/2005
(55) Part 11, Electronic Records; Electronic Signatures—Scope and Application CDER 09/05/2003
(56) Implementation of the Inspection by Accredited Persons Program Under The Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties CDRH 1200 10/04/2004
(57) Alternative to Certain Prescription Device Labeling Requirements OC 1150 01/21/2000
(58) Civil Money Penalty Policy OC 1124 06/08/1999
(59) Classification Names for Medical Devices and In Vitro Diagnostic Products (FDA Pub No. 95–4246) OC 10 03/01/1995
(60) Color Additive Petitions (p. II–19 of PMA Manual) OC 296 06/01/1987
(61) Color Additive Status List (Inspection Operations Manual) OC 268 02/01/1989
(62) Commercial Distribution/Exhibit Letter OC 246 04/10/1992
(63) Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices—Draft Guidance for Industry and FDA Staff OC 1217 10/11/2005
(64) Consumer-Directed Broadcast Advertising of Restricted Devices OC 1513 02/10/2004
(65) FDA Guide for Validation of Biological Indicator Incubation Time OC 283 01/01/1986
(66) General Principles of Software Validation; Final Guidance for Industry and FDA Staff OC 938 01/11/2002
(67) Guidance on Performance Standard for Lead Wires and Patient Cables OC 1197 03/09/1998
(68) Guideline for the Monitoring of Clinical Investigations OC 428 01/01/1988
(69) Implementation of the Biomaterials Access Assurance Act of 1998; Draft Guidance for Industry and FDA OC 1324 04/02/2001
(70) Letter to Medical Device Manufacturer on Pentium processors OC 456 02/14/1995
(71) Medical Device Tracking—Guidance for Industry and FDA Staff OC 169 05/05/2003
(72) Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers (FDA 90–4236) OC 295 09/01/1989
(73) Sec. 300.600 Commercial Distribution with Regard to Premarket Notification [Section 510(k)] [CPG 7124.19] OC 181 09/24/1987
(74) Sterilized Convenience Kits for Clinical and Surgical Use; Final Guidance for Industry OC 1390 01/07/2002
(75) User Labeling for Devices that Contain Natural Rubber (21 CFR 801.437); Small Entity Compliance Guide; Guidance for Industry OC 1212 04/01/2003
(76) Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects OC/DBM 2229 03/19/1999
(77) Regulating In Vitro Diagnostic Device (IVD) Studies OC/DBM 1132 12/17/1999
(78) Guidance on Electrosurgical Devices and the Application of the Performance Standard for Electrode Lead Wires and Patient Cables OC/DE1 1129 11/15/1999
(79) Letter to Medical Device Industry on Endoscopy and Laparoscopy Accessories (Galdi) OC/DE1 545 05/17/1993
(80) All U.S. Condom Manufacturers, Importers and Repackagers OC/DE2 2510 04/07/1987
(81) Condoms: Inspection and Sampling at Domestic Manufacturers and of all Repackers; Sampling from all Importers (Damaska Memo to Field on 4/8/87) OC/DE2 293 04/08/1987
(82) Dental Handpiece Sterilization (Dear Doctor Letter) OC/DE2 589 09/28/1992
(83) Draft Guidance for Industry on Surveillance and Detention Without Physical Examination of Condoms OC/DE2 1139 08/14/2000
(84) Ethylene Oxide; Ethylene Chlorohydrin; and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure OC/DE2 1019 06/23/1978

CDRH GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

(85) Hazards of Volume Ventilators and Heated Humidifiers OC/DE2 901 09/15/1993
(86) Latex Labeling Letter (Johnson) OC/DE2 831 03/18/1993
(87) Letter—Condom Manufacturers and Distributors OC/DE2 56 04/05/1994
(88) Letter—Manufacturers, Distributors and Importers of Condom Products (included in Condom Packet 398) OC/DE2 52 02/23/1994
(89) Letter—Manufacturers, Importers, and Repackagers of Condoms for Contraception or Sexually-Transmitted Disease Prevention (Holt) OC/DE2 53 02/13/1989
(90) Letter to Industry, Powered Wheelchair Manufacturers from RMJohnson OC/DE2 869 05/10/1993
(91) Letter to Manufacturers/Repackers Using Cotton OC/DE2 101 04/22/1994
(92) Letter to Ophthalmologists about Lasers for Refractive Surgery OC/DE2 8323 06/27/1997
(93) Manufacturers and Initial Distributors of Hemodialyzers OC/DE2 2507 05/23/1996
(94) Manufacturers and Initial Distributors of Sharps Containers and Destroyers Used by Health Care Professionals OC/DE2 933 02/03/1994
(95) Pesticide Regulation Notice 94–4 Interim Measures for the Registration of Antimicrobial Products/Liquid Chemical Germicides with Medical Device Use Claims OC/DE2 851 06/30/1994
(96) Prospective Manufacturers of Barrier Devices used during Oral Sex for STD Protection OC/DE2 1394 10/31/1996
(97) Shielded Trocars and Needles Used for Abdominal Access During Laparoscopy OC/DE2 1122 08/23/1996
(98) Standard Specification for Rubber Contraceptives (Condoms) OC/DE2 628 10/28/1983
(99) Surveillance and Detention Without Physical Examination of Surgeons' and/or Patient Examination Gloves; Guidance for Industry—Draft OC/DE2 1141 07/26/2000
(100) Labeling for Male Condoms Made of Natural Rubber Latex—Class II Special Controls Guidance Document—Draft Guidance for Industry and FDA Staff OC/DE2/OBGUB 1548 11/14/2005
(101) Computerized Devices/Processes Guidance—Application of the Medical Device GMP to Computerized Devices and Manufacturing Processes OC/DE3 247 05/01/1992
(102) Design Control Guidance for Medical Device Manufacturers OC/DE3 994 03/11/1997
(103) Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals OC/DE3 1168 08/14/2000
(104) Guidance for Industry: Labeling for Electronic Anti-Theft Systems OC/DE3 1170 08/15/2000
(105) Keeping Medical Devices Safe from Electromagnetic Interference OC/DE3 1081 07/01/1995
(106) Labeling Recommendations for Single-Use Devices Reprocessed by Third Parties and Hospitals; Final Guidance for Industry and FDA OC/DE3 1392 07/30/2001
(107) Letter to Trade Association: ReUse of Single-use or Disposable Medical Devices OC/DE3 961 12/27/1995
(108) Medical Device Electromagnetic Interference Issues, Problem Reports, Standards, and Recommendations OC/DE3 1086
(109) Medical Devices and EMI: The FDA Perspective OC/DE3 1082 01/01/1995
(110) Quality Assurance Guidelines for Hemodialysis Devices OC/DE3 507 02/01/1991
(111) Quality System Information for Certain Premarket Application Reviews; Guidance for Industry and FDA Staff OC/DE3 1140 02/03/2003
(112) Safety of Electrically Powered Products: Letter To Medical Device and Electronic Product Manufacturers From Lillian Gill & BHB correction memo# OC/DE3 1087 09/18/1996
(113) Unsafe Patient Lead Wires and Cables OC/DE3 889 09/03/1993
(114) Draft Guidance: Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval OC/DPO 1269 08/05/1999
(115) Inspection of Medical Device Manufacturers; Final Guidance for Industry and FDA OC/DPO/FPB 1702 02/07/2001
(116) Draft Guidance for Industry: Container and Closure Integrity Testing in Lieu of Sterility Testing as a Component of the Stability Protocol for Sterile Products OCD 01/28/1998
(117) FDA and Industry Actions on Premarket Approval Applications (PMAs): Effect on FDA Review Clock and Performance Assessment—Guidance for Industry and FDA Staff OCD 1218 10/08/2003
(118) FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment—Guidance for Industry and FDA Staff OCD 1219 05/21/2004
(119) Guidance for Industry: Financial Disclosure by Clinical Investigators OCD 03/20/2001
(120) Premarket Assessment of Pediatric Medical Devices—Guidance for Industry and FDA Staff OCD 1220 05/14/2004
(121) Resolving Scientific Disputes Concerning the Regulation of Medical Devices, A Guide to use of the Medical Devices Dispute Resolution Panel; Final Guidance for Industry and FDA OCD 1121 07/02/2001
(122) FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability OCER 434 02/06/1998
(123) CDRH Manual for Good Guidance Practices (GGP) Regulations; Final Guidance for FDA Staff OCER/DDUPSA 1323 02/09/2001
(124) Do It By Design—An Introduction to Human Factors in Medical Devices OCER/DDUPSA 995 12/01/1996
(125) Frequently Asked Questions about the Reprocessing and Reuse of Single Use Devices by Third Party and Hospital Reprocessors; Final Guidance for Industry and FDA Staff OCER/DDUPSA 1333 07/06/2001
(126) Frequently Asked Questions about the Reprocessing and Reuse of Single-Use Devices by Third-Party and Hospital Reprocessors; Three Additional Questions—Guidance for Industry, FDA Staff, Third-Party and Hospital Reprocessors OCER/DDUPSA 1427 07/16/2003
(127) Frequently-Asked-Questions about the Reprocessing and Reuse of Single-Use Devices by Third-Party and Hospital Reprocessors: Three Additional Questions; Final Guidance for Industry and FDA Staff OCER/DDUPSA 1408 07/09/2002
(128) Guidance on Medical Device Patient Labeling; Final Guidance for Industry and FDA Reviewers OCER/DDUPSA 1128 04/19/2001
(129) Human Factors Points to Consider for IDE Devices OCER/DDUPSA 839 01/17/1997
(130) Human Factors Principles for Medical Device Labeling OCER/DDUPSA 227 09/01/1993
(131) Medical Device Reporting for User Facilities OCER/DDUPSA 989 04/01/1996
(132) Medical Device Use-Safety: Incorporating Human Factors Engineering into Risk Management OCER/DDUPSA 1497 07/18/2000
(133) Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendations for State and Local Agencies OCER/DMQRP 1071 08/13/1998
(134) Clarification of Radiation Control Regulations for Diagnostic X-Ray Equipment (FDA 89–8221) OCER/DMQRP 758 03/01/1989
(135) The Mammography Quality Standards Act Final Regulations Document 3 OCER/DMQRP 1496 07/18/2000
(136) The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #11—Guidance for Industry, MQSA Inspectors, and FDA Staff OCER/DMQRP 1569 08/12/2005
(137) The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #10—Guidance for Industry and FDA Staff OCER/DMQRP 1554 10/31/2005
(138) The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #9—Draft Guidance for Industry and FDA OCER/DMQRP 1539 07/15/2005

CDRH GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

(139) Guidance for Industry and FDA Staff—Exemption from Reporting and Recordkeeping Requirements for Low Power Laser Products (Laser Notice 54) OCER/DMQRP OCER/DMQRP/EPDB 1592 01/06/2006
(140) A Guide for the Submission of an Abbreviated Radiation Safety Report on X-Ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use OCER/DMQRP/DDB 978 03/01/1996
(141) A Guide for the Submission of An Abbreviated Radiation Safety Reports on Cephalometric Devices Intended for Diagnostic Use OCER/DMQRP/DDB 977 03/01/1996
(142) A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and their Major Components OCER/DMQRP/DDB 257 01/01/1982
(143) Compliance Program Guidance Manual: Field Compliance Testing of Diagnostic (Medical) X-ray Equipment OCER/DMQRP/DDB 1133 03/15/2000
(144) Guide for the Submission of Initial Reports on Computed Tomography X-Ray Systems OCER/DMQRP/DDB 271 12/01/1985
(145) Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems; Guidance for Industry and FDA Staff OCER/DMQRP/DDB 2619 09/05/2003
(146) Manufacturers/Assemblers of Diagnostic X-ray Systems: Enforcement Policy for Positive-Beam Limitation (PBL) Requirements in 21 CFR 1020.31(g) OCER/DMQRP/DDB 116 10/13/1993
(147) Abbreviated Reports on Radiation Safety for Microwave Products (Other Than Microwave Ovens)—E.G. Microwave Heating, Microwave Diathermy, RF Sealers, Induction, Dielectric Heaters, Security Systems OCER/DMQRP/EPDB 236 08/01/1995
(148) Applicability of the Performance Standard for High-Intensity Mercury Vapor Discharge Lamps (21 CFR 1040.30)—Guidance for Industry and FDA Staff OCER/DMQRP/EPDB 1565 11/06/2005
(149) Application for a Variance from 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device OCER/DMQRP/EPDB 903 03/01/1987
(150) Compliance Guide for Laser Products (FDA 86–8260) OCER/DMQRP/EPDB 278 09/01/1985
(151) Exemption from Reporting and Record keeping Requirements for Certain Sunlamp Product Manufacturers OCER/DMQRP/EPDB 343 09/16/1981
(152) Guide for Establishing and Maintaining a Calibration Constancy Intercomparison System for Microwave Oven Compliance Survey Instruments (FDA 88–8264)] OCER/DMQRP/EPDB 286 03/01/1988
(153) Guide for Preparing Product Reports for Lasers and Products Containing Lasers OCER/DMQRP/EPDB 277 09/01/1995
(154) Guide for the filing of Annual Reports for X-Ray Components and Systems OCER/DMQRP/EPDB 253 07/01/1980
(155) Imports Radiation-Producing Electronic Products (FDA 89–8008) OCER/DMQRP/EPDB 756 11/01/1988
(156) Letter to All Manufacturers and Importers of Microwave Ovens: Retention of Records Required by 21 CFR 1002 OCER/DMQRP/EPDB 880 08/24/1981
(157) Open Door Operation of Microwave Ovens as a Result of Oven Miswiring OCER/DMQRP/EPDB 646 03/28/1980
(158) Policy on Lamp Compatibility (sunlamps) OCER/DMQRP/EPDB 2343 09/02/1986
(159) Policy on Warning Label Required on Sunlamp Products OCER/DMQRP/EPDB 1343 06/25/1985
(160) Procedures for Laboratory Compliance Testing of Television Receivers OCER/DMQRP/EPDB 945 05/01/1986
(161) Responsibilities of Laser Light Show Projector Manufacturers, Dealers, and Distributors; Final Guidance for Industry and FDA—Laser Notice 51 OCER/DMQRP/EPDB 1349 05/27/2001
(162) Compliance Guidance—The Mammography Quality Standards Act Final Regulations: Preparing For MQSA Inspections; Final Guidance for Industry and FDA OCER/DMQRP/ICB 6400 11/05/2001
(163) Guidance for Industry and FDA Staff—Mammography Facility Surveys, Mammography Equipment Evaluations, and Medical Physicist Qualification Requirements under MQSA OCER/DMQRP/ICB 6409 09/13/2005
(164) 510(k) Manual—Premarket Notification: 510(k)—Regulatory Requirements for Medical Devices OCER/DSMICA 469 08/01/1995
(165) Certification Statement for the Impact Resistance Test OCER/DSMICA 1460 10/25/1993
(166) Comparison Chart: 1996 Quality System Reg vs. 1978 Good Manufacturing Practices Reg vs. ANSI/ISO/ASQC Q9001 and ISO/DI 13485:1996 OCER/DSMICA 133
(167) DRAFT Guidance for Staff, Industry and U.S./EU CABs; Implementation Plan for the MRA between the EU and the USA: Confidence Building Program: Overview, Medical Device Annex, Version 7 June 29, 2000 OCER/DSMICA 1396
(168) DRAFT Guidance for Staff, Industry and U.S./EU CABs; Implementation Plan for the MRA between the EU and the USA: Confidence Building Program: Procedures, Medical Device Annex, Version 7 June 29, 2000 OCER/DSMICA 1397
(169) Draft Medical Glove Guidance Manual OCER/DSMICA 852 07/30/1999
(170) Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA) OCER/DSMICA 1114 01/06/1999
(171) Impact Resistant Lenses: Questions and Answers (FDA 87–4002) OCER/DSMICA 23 09/01/1987
(172) Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Final Guidance for Staff, Industry and Third Parties OCER/DSMICA 1160 02/02/2001
(173) In Vitro Diagnostic Devices: Guidance for the Preparation of 510(k) Submissions OCER/DSMICA 471 01/01/1997
(174) Labeling—Regulatory Requirements for Medical Devices (FDA 89–4203) OCER/DSMICA 470 09/01/1989
(175) Medical Device Appeals and Complaints: A Guidance on Dispute Resolution OCER/DSMICA 396 02/19/1998
(176) Medical Device Quality Systems Manual: A Small Entity Compliance Guide OCER/DSMICA 6303 12/01/1996
(177) Medical Device Reporting for Manufacturers OCER/DSMICA 987 03/01/1997
(178) Overview of FDA Modernization Act of 1997, Medical Device Provisions OCER/DSMICA 1174 02/19/1998
(179) Regulation of Medical Devices: Background Information for International Officials OCER/DSMICA 610 04/14/1999
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(581) Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies OSB/DPS 316 02/19/1998
(582) Procedures for Handling Post-Approval Studies Imposed by PMA Order—Draft Guidance for Industry and FDA Staff OSB/DPS 09/15/2005
(583) SMDA to FDAMA: Guidance on FDA's Transition Plan for Existing Postmarket Surveillance OSB/DPS 318 11/02/1998
(584) Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment—Guidance for Industry and FDA Staff OSB/DPS OCER/DDUPSA 1537 03/10/2006
(585) Common Problems: Baseline Reports and MedWatch Form 3500A (letter to manufacturers updated) OSB/DSS 379
(586) Instructions for Completing FDA Form 3500A with Coding Manual for Form 3500A (MEDWATCH) OSB/DSS 853 04/04/2001
(587) Instructions for Completing Form 3417: Medical Device Reporting Baseline Report [MDR] OSB/DSS 1061 03/31/1997
(588) MDR Guidance Document No. 1 - IOL - E1996004 OSB/DSS 216 08/07/1996
(589) Medical Device Reporting: An Overview OSB/DSS 509 04/01/1996
(590) MEDWATCH FDA Form 3500A For Use By User Facilities, Distributors and Manufacturers for Mandatory Reporting OSB/DSS 854 06/01/1993
(591) Variance from Manufacturer Report Number Format OSB/DSS 08/12/1996
(592) Variance from Manufacturer Report Number Format [MDR letter] OSB/DSS 1059 07/16/1996
(593) Guidance for Industry: Medical Device Reporting—Alternative Summary Reporting (ASR) Program OSB/DSS/RSMB 315 10/19/2000
(594) Guidance on Adverse Event Reporting for Hospitals that Reprocess Devices Intended by the Original Equipment Manufacturer for Single Use OSB/DSS/RSMB 1334 04/24/2001
(595) Medical Device Reporting - Remedial Action Exemption; Guidance for Industry and FDA OSB/DSS/RSMB 188 09/26/2001
(596) Needlesticks—Medical Device Reporting Guidance for User Facilities, Manufacturers, and Importers OSB/DSS/RSMB 250 11/12/2002
(597) CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standards for Recognition; Final Guidance for Industry OSEL 616 06/20/2001
(598) Draft Document—A Primer on Medical Device Interactions with Magnetic Resonance Imaging Systems OSEL 952 02/07/1997
(599) Frequently Asked Questions on the Recognition of Consensus Standards; Guidance for Industry and for FDA Staff OSEL 109 07/22/2002
(600) Recognition and Use of Consensus Standards; Final Guidance for Industry and FDA OSEL 321 06/20/2001
(601) Guidance for Industry Guidance on FDA's Expectations of Medical Device Manufacturers Concerning the Year 2000 Date Problem OSEL/DECS 2000 05/15/1998
(602) Immunotoxicity Testing Guidance OSEL/DLS 635 05/06/1999
(603) 21 CFR Part 11; Electronic Records; Electronic Signatures, Glossary of Terms; Draft Guidance for Industry OUT 09/24/2001
(604) 21 CFR Part 11; Electronic Records; Electronic Signatures, Validation; Draft Guidance for Industry OUT 09/24/2001
(605) Combination Products—Timeliness of Premarket Reviews—Dispute Resolution Guidance—Draft Guidance for Industry OUT 05/04/2004
(606) Computerized Systems Used in Clinical Trials OUT 04/01/1999

CDRH GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

(607) Draft Guidance for Industry on Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records OUT 11/12/2002
(608) Guidance for Industry and FDA Staff: Application User Fees for Combination Products OUT 04/21/2005
(609) Information Sheet Guidance for IRB's—Frequently Asked Questions about IRB Review of Medical Devices OUT 01/01/2006
(610) Information Sheet Guidance for IRB's—Significant Risk and Nonsignificant Risk Medical Device Studies OUT 01/01/2006
(611) Small Business Guide to FDA (FDA 96–1092) OUT 16 01/01/1996

V. Center for Food Safety and Applied Nutrition (CFSAN)

For information on a specific guidance document or to obtain a hard copy, contact: Industry Activities Staff, Center for Food Safety and Applied Nutrition/FDA, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2600, *http://www.cfsan.fda.gov/~dms/guidance.html*.

No CFSAN guidance documents were withdrawn from January 5, 2005, to January 5, 2006.

The following is a copy of a list of current CFSAN guidance documents obtained from the FDA Web site as of March 14, 2006.

CFSAN GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

Recently Issued Guidance

March 1, 2006: Draft Guidance: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables (Added to Produce)
March 1, 2006: Frequently Asked Questions about FDA's Regulation of Infant Formula (Updated in Infant Formula)
February 17, 2006: Whole Grain Label Statements (Added to Food Labeling)
January 30, 2006: Redbook 2000—Chapter IV.C.6: Carcinogenicity Studies with Rodents (Updated in Food and Color Additives)
December 30, 2005: Requesting an Extension to Use Existing Label Stock after the Trans Fat Labeling Effective Date of January 1, 2006 (Added to Food Labeling)
December 22, 2005: Lead in Candy Likely To Be Consumed Frequently by Small Children: Recommended Maximum Level and Enforcement Policy (Added to Chemical and Pesticide Contaminants)
December 14, 2005: Questions and Answers Regarding Food Allergens, including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 2) (Added to Food Labeling)

General Publications

Compliance Policy Guides Manual (August 2000; Updated April 2001) Consolidates the Administrative Guidelines Manual. Lists levels of contamination at which regulatory actions will be invoked. Print version available from NTIS. Their order numbers are: Foods and Cosmetics Order No. PB96–920500 Drugs and Biologics Order No. PB96–920500 Veterinary Medicine Order No. PB96–920800 Medical and Radiological Devices Order No. PB96–920900 Source: National Technical Information Service
Compliance Programs Guidance Manual (March 1995) Manual. Contains inspectional and analytical directives implemented by FDA Field Units. Provides direction for general enforcement of laws and regulations. Order No. PB95–915499 (manual only) Source: National Technical Information Service
FDA Recall Policy (2002) Explains the three classes of recalls and discusses FDA's role in the recall process. Source: Industry Activities Staff
Guidance for FDA Staff: The Leveraging Handbook; An Agency Resource for Effective Collaborations
Guidance for Small Businesses: Submission of Comments for CFSAN Rulemaking
Investigations Operations Manual (May 1996) Manual. Provides standard operation procedures for FDA Investigators. The inspectional methods cover sanitation, micro problems, labeling, standards, and GMP's. Order No. PB–95–913399 Source: National Technical Information Service
Regulatory Procedures Manual (August 1997) Contains directives for recalls, legal actions, and cooperative agreements with states, such as those under the Public Health Service. Order No. PB95–265534 Source: National Technical Information Service

Chemical and Pesticide Contaminants Publications

Lead in Candy Likely To Be Consumed Frequently by Small Children: Recommended Maximum Level and Enforcement Policy (December 22, 2005)
Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations (May 2005)
Channels of Trade Policy for Commodities with Vinclozolin Residues (June 12, 2002)
FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments for Cry9C Protein Residues (January 19, 2001)
Channels of Trade Policy for Commodities with Methyl Parathion Residues (December 2000)
Action Levels for Poisonous or Deleterious Substances in Human Food and Animal Feed (2000) Booklet. Lists allowable action levels for contaminants in food and feed. Source: Industry Activities Staff
Pesticides Analytical Manual (1999) Contains the procedures and methods used in FDA labs for regulatory examination of food and feed samples to determine compliance with the FD&C Act. Volume 1—Order No.PB94–911899 Source: National Technical Information Service
Guidance for Industry: Letter to Manufacturers, Importers, and Distributors of Imported Candy and Candy Wrappers (June 13, 1995)
FDA Advisory for Deoxynivanol (DON) in Finished Wheat Products Intended for Human Consumption and in Grain and Grain By-Products for Animal Feed (September 16, 1993) Office of Plant & Dairy Foods & Beverages Food and Drug Administration (HFS–306) 5100 Paint Branch Parkway College Park, MD 20740 (301) 436–2367 See also: Compliance Policy Guides—Guidance for FDA Staff on Guidance Levels for Radionuclides in Domestic and Imported Foods July 2004

Cosmetic Publications

FDA's Cosmetic Labeling Manual (October 1991) Booklet. A summary of regulatory requirements for labeling of cosmetics marketed in the United States. Available from: Food and Drug Administration Office of Cosmetics and Colors (HFS–100) 5100 Paint Branch Parkway College Park, MD 20740–3235
Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance (December 17, 2003)

CFSAN GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients (January 10, 2005)

Dietary Supplements Publications

A Dietary Supplement Labeling Guide (April 2005)
Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (November 2004)
Interim Procedures for Qualified Health Claims in the Labeling of Conventional Human Food and Human Dietary Supplements (July 10, 2003)
Interim Evidence-based Ranking System for Scientific Data (July 10, 2003)
Structure/Function Claims: Small Entity Compliance Guide (January 9, 2002)
Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements Small Entity Compliance Guide (January 1999) Source: Industry Activities Staff
Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements (December 1999) Source: Office of Nutritional Products, Labeling & Dietary Supplements
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (July 1998) Source: Office of Food Labeling
Iron-Containing Supplements and Drugs: Label Warning Statements: Small Entity Compliance Guide (October 17, 2003)

Food and Color Additives Publications

Providing Regulatory Submissions in Electronic Format—General Considerations (October 2003)
Providing Food and Color Additive Petitions in Electronic Format (July 2001)
Electronic Submission Forms (July 2001)
FDA's Policy for Foods Developed by Biotechnology (1995)
Partial List of Enzyme Preparations That are Used in Foods (2001)
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food (2001)
Use of Antibiotic Resistance Marker Genes in Transgenic Plants (September 1998)
Enzyme Preparations: Chemistry Recommendations For Food Additive and GRAS Affirmation Petitions (January 1993) Describes requirements for chemistry data needed to support food additive and GRAS petitions for the preparation of enzymes used in processing food.Source: Office of Premarket Approval
Submitting Requests under 21 CFR 170.39 Threshold of Regulation for Substances used in Food Contact Articles (April 2005) Lists the information that should be submitted to FDA when requesting that the agency review a specific use of a food contact article to determine whether its components will require regulation as a food additive. Source: Office of Premarket Approval
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations (December 1992) This document provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. Source: Office of Premarket Approval
Frequently Asked Questions about Generally Recognized as Safe (GRAS) (December 2004) Source: Office of Food Additive Safety
How to Submit a GRAS Notice (April 17, 1997)
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions (May 1993) Describes the types of chemistry data necessary for supporting petitions for regulations of direct food additives such as synthetic sweeteners, and preservatives; or the affirmation of the use of food ingredients as generally recognized as safe (GRAS) such as sucrose, and many enzymes used in food processing. Source: Office of Premarket Approval
Statement of Policy: Foods Derived from New Plant Varieties: Notice (May 1992) FEDERAL REGISTER notice dated May 29, 1992; 57 FR 22984. Source: Office of Premarket Approval
Guidelines for the Preparation of Petition Submissions (1996) Source: Office of Premarket Approval
Pre-petition Consultations for Food Additives and Color Additives (April 2005)
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors (1996) Source: Office of Premarket Approval
FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs or Cosmetics Use (January 1997) Source: Office of Premarket Approval
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet (September 1995) Source: Office of Premarket Approval
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I) (1982) Source: National Technical Information Service (NTIS)
Toxicological Principles for the Safety of Food Ingredients (Redbook 2000) (July 7, 2000; Updated October 2001, November 2003, January 2006) The Agency is in the process of updating the Redbook and is now making Redbook 2000 chapters available electronically. The Redbook 2000 chapters now substitute for, or supplement, guidance available in the 1982 Redbook I (see above) and in the 1993 Draft Redbook II, which can be obtained from the Office of Food Additive Safety. As additional chapters of Redbook 2000 are completed they will become available electronically.
Toxicological Testing of Food Additives (1983) Source: Office of Premarket Approval
Templates for Reporting Toxicology Data (March 2004)
Draft Guidance: Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submission to the Center for Food Safety and Applied Nutrition (September 17, 2003)
Environmental Assessment Technical Handbook (March, 1987) Order No. PB87175345–AS, A–01 Source: National Technical Information Service (NTIS)
Guidance on Consultation Procedures Foods Derived From New Plant Varieties (October 1997) Source: Office of Premarket Approval
Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use (November 2004)
Bovine Spongiform Encephalopathy (BSE) in Products for Human Use (1997) Executive Secretariat (HF–40) Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857
Food Additive Petition Expedited Review—Guidance for Industry and Center for Food Safety and Applied Nutrition Staff (January 1999) Source: Office of Premarket Approval
Antimicrobial Food Additives—Guidance (July 1999) Source: Office of Premarket Approval
Preparation of Premarket Notifications for Food Contact Substances (Food Contact Notifications (FCN)): Administrative Recommendations (May 2002)
Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations (April 2002) Source: Office of Food Additive Safety

CFSAN GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations (April 2002) Source: Office of Food Additive Safety

Food Labeling Publications

A Food Labeling Guide (May 1997) Booklet. This booklet is a summary of the required statements that must appear on food labels. Source: Industry Activities Staff
Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Small Entity Compliance Guide (August 20, 2003)
Requesting an Extension to Use Existing Label Stock after the Trans Fat Labeling Effective Date of January 1, 2006 (December 30, 2005)
Interim Procedures for Qualified Health Claims in the Labeling of Conventional Human Food and Human Dietary Supplements (July 10, 2003)
Interim Evidence-based Ranking System for Scientific Data (July 10, 2003)
Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements (December 18, 2002)
Draft Guidance: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering (January 2001)
Small Business Food Labeling Exemption (June 1996) Information sheet and sample small business exemption application form. Source: Industry Activities Staff
Food Labeling: Questions and Answers Volume I, (August 1994) Booklet. Provided to facilitate the advice to retail businesses process of developing or revising labels for foods other than dietary supplements. Source: Industry Activities Staff
Food Labeling: Questions and Answers Volume II, (February 1996) Booklet. Contains FDA's advice to retail businesses and restaurants making health and nutrient claims on their food products. Source: Government Printing Office
Fair Packaging and Labeling Act Manual (June, 1978) Book. Presents FDA's interpretations of the requirements of the Fair Packaging and Labeling Act as it applies to foods, drugs, cosmetics, and medical devices. Order No. PB–83–222117 Source: National Technical Information Service
Implementation of Section 10809 of the Farm Security and Investment Act of 2002, Pub. L. No. 107–171, § 10809 (2002) regarding the Petition Process to Request Approval of Labeling for Foods that Have Been Treated by Irradiation. (available in PDF)
Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements (December 1999) Source: Office of Nutritional Products, Labeling & Dietary Supplements
Iron-Containing Supplements and Drugs: Label Warning Statements: Small Entity Compliance Guide (October 17, 2003)
Structure/Function Claims: Small Entity Compliance Guide (January 9, 2002)
Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (July 1998) Source: Office of Food Labeling
FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases (March 1998) Source: Office of Food Labeling
Guidelines for Determining Metric Equivalents of Household Measures (October 1, 1993) Source: Office of Food Labeling
Food Labeling—Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution Small Entity Compliance Guide (July 2001)
Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction (October 7, 2002)
Food Labeling—Serving Sizes Reference Amount for Baking Powder, Baking Soda, Pectin; Small Entity Compliance Guide (July 2001)
Whole Grain Label Statements (February 2006)
Questions and Answers Regarding Food Allergens, including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 2) (December 14, 2005)

Food Processing Publications

Bacteriological Analytical Manual 7th Edition (1992) Manual. Provides quantitative and qualitative bacteriological testing procedures for detecting microbiological contamination. Contains screening procedures for Salmonella, Shigella, Clostridium botulinum, etc. Source: AOAC International
Bacteriological Analytical Manual Online (2001)

Food and Cosmetic Security Publications

Entry Types and Entry Identifiers—Prior Notice of Imported Food (April 7, 2005)
Guidance for Records Access Authority Provided in Title III, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (November 16, 2005)
Questions and Answers Regarding Establishment and Maintenance of Records (Edition 2) (November 10, 2005)
What You Need to Know About Establishment and Maintenance of Records (December 2004)
What You Need to Know About Administrative Detention of Foods (November 2004)
Prior Notice of Imported Food Contingency Plan for System Outages (August 12, 2004)
Questions and Answers Regarding Registration of Food Facilities (Edition 4) (August 6, 2004)
Prior Notice of Imported Food Questions and Answers (Edition 2) (May 3, 2004)
Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance (December 17, 2003)
Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance (December 17, 2003)
What You Need to Know About Registration of Food Facilities (November 25, 2003)
What You Need to Know About Prior Notice of Imported Food Shipments (November 25, 2003)
Necessity of the Use of Food Product Categories in Registration of Food Facilities (July 17, 2003)
Dairy Farms, Bulk Milk Transporters, Bulk Milk Transfer Stations and Fluid Milk Processors Food Security Preventive Measures Guidance (July 11, 2003)
Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance (March 21, 2003)
Importers and Filers: Food Security Preventive Measures Guidance (March 21, 2003)
See also: Compliance Policy Guides—Guidance for FDA Staff on enforcement of Registration of Food Facilities December 2003, Last Revised November 2004 and Prior Notice of Imported Foods December 2003, Last Revised November 2005

Imports and Exports Publications

CFSAN GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Prior Notice of Imported Food: Harmonized Tariff Schedule Codes Flagged with Prior Notice Indicators (August 26, 2004) HTS Codes Revision History
Prior Notice of Imported Food Contingency Plan for System Outages (August 12, 2004)
Prior Notice of Imported Food Questions and Answers (Edition 2) (May 3, 2004)
What You Need to Know About Prior Notice of Imported Food Shipments (November 25, 2003)
Guidance for Industry and FDA: Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors with Interest in Exporting to Chile (June 22, 2005)
Importers and Filers: Food Security Preventive Measures Guidance (March 21, 2003)
Guidance for Industry: FDA Export Certificates (2002) (also available in PDF)
Draft Guidance: Regulatory Procedures Manual Chapter 9, Subchapter: Guidance Concerning Recommending Customs' Seizure and Destruction of Imported Human and Animal Food That Has Not Been Reconditioned (November 5, 2002)
Guidance for Industry: Letter to Manufacturers, Importers, and Distributors of Imported Candy and Candy Wrappers (June 13, 1995)
FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods (1985) Booklet. Question-and-Answer guide for importers, low-acid and acidified import requirements. Source: Industry Activities Staff
See also: Compliance Policy Guides—Guidance for FDA Staff on Guidance Levels for Radionuclides in Domestic and Imported Foods July 2004

Infant Formula Publications

Frequently Asked Questions about FDA's Regulation of Infant Formula (March 1, 2006)
Guidelines Concerning Notification and Testing of Infant Formula (1985)Source: Office of Nutritional Products, Labeling & Dietary Supplements
Guidelines for Evaluation of the Safety and Suitability of New Infant Formulas for Feeding Preterm Infants (1988) Source: Office of Nutritional Products, Labeling & Dietary Supplements
Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants (1988) Source: Office of Nutritional Products, Labeling & Dietary Supplements
Guidelines for Evaluation of the Safety and Suitability of Infant Formulas for Feeding Infants with Allergic Diseases (1990) Source: Office of Nutritional Products, Labeling & Dietary Supplements
Guidelines for the Clinical Evaluation of New Products Used in the Dietary Management of Infants, Children and Pregnant Women with Metabolic Disorders (1987) Source: Office of Nutritional Products, Labeling & Dietary Supplements

Juice Publications

Letter to State Regulatory Agencies and Firms That Produce Treated (but not Pasteurized) and Untreated Juice and Cider (September 22, 2005)
Recommendations to Processors of Apple Juice or Cider on the Use of Ozone for Pathogen Reduction Purposes (November 2004)
Juice HACCP Hazards and Control Guidance—First Edition (March 3, 2004)
The Juice HACCP Regulation: Questions and Answers (September 4, 2003)
Standardized Training Curriculum for Application of HACCP Principles to Juice Processing (June 2003)
Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices (April 24, 2002)
Juice HACCP Small Entity Compliance Guide (April 4, 2003)
Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction (October 7, 2002)
Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin (October 2001)
The Juice HACCP Regulation: Questions & Answers (August 31, 2001)
Warning and Notice Statement: Labeling of Juice Products Small Entity Compliance Guide (September 18, 1998)

Low-Acid and Acidified Foods Publications

FDA Food Importer's Guide for Low-Acid Canned and Acidified Foods (1985) Booklet. Question-and-Answer guide for importers, low-acid and acidified import requirements. Source: Industry Activities Staff

Milk Sanitation Publications

Grade ''A'' Pasteurized Milk Ordinance 2003 Revision (March 2, 2004)
Grade ''A'' Pasteurized Milk Ordinance 2001 Revision (May 15, 2002)
Importation of PMO Defined Dairy Products (M–I–00–4) (April 11, 2000)
Evaluation of Milk Laboratories (1995 Edition) Provides the procedures for the evaluation of milk laboratories. Source: Milk Safety Branch
Methods of Making Sanitation Ratings of Milk Supplies (1999) Rating method for evaluating sanitary quality of milk. Source: Milk Safety Branch
Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers (1999) Provides procedures for a national reciprocity milk program. Includes by-laws and constitution of the National Conference on Interstate Milk Shipments and the Memorandum of Understanding between the National Conference and FDA. Source: Milk Safety Branch
Frozen Dessert Processing Guidelines (1989) Sanitation Standards. Source: Milk Safety Branch
Dry Milk Ordinance (1995) Source: Milk Safety Branch
Pasteurized Milk Ordinance (1999) Source: Milk Safety Branch

Natural Toxins Publications

Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin (October 2001)
Fumonisin Levels in Human Foods and Animal Feeds (November 9, 2001)

Nutrition and Food Science Publications

FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases (March 1998) Generic instructions for developing and preparing an acceptable data base when valid estimates of nutrient content and variation are not available for the food (single or mixed products) to be labeled. Source: Office of Food Labeling

CFSAN GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Guidelines for Determining Metric Equivalents of Household Measures (October 1, 1993) Source: Office of Food Labeling
List of Products for Each Product Category (October 8, 1992) Source: Office of Food Labeling
Label Declaration of Allergenic Substances in Foods; Notice to Manufacturers (June 10, 1996) Source: Office of Food Labeling
Guidance on Labeling of Foods that Need Refrigeration by Consumers (February 24, 1997) 62 FR 8248 Source: Office of Food Labeling
Interim Guidance on the Voluntary Labeling of Milk and Milk Products that have not been treated with Recombinant Bovine Somatropin (February 10, 1994) 59 FR 6279 Source: Office of Food Labeling

Produce Publications

Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables (October 26, 1998) (Also available in French, Spanish, Portuguese and Arabic) Source: Food Safety Initiative Staff
Draft Guidance: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables (March 1, 2006)
Reducing Microbial Food Safety Hazards For Sprouted Seeds (October 1999) Source: Office of Plant and Dairy Foods and Beverages
Sampling And Microbial Testing Of Spent Irrigation Water During Sprout Production (October 1999) Source: Office of Plant and Dairy Foods and Beverages

Retail Food Protection Publications

A Notice from the Food and Drug Administration to Growers, Food Manufacturers, Food Warehouse Managers, and Transporters of Food Products on Decontamination of Transport Vehicles (October 7, 2005)
Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance (December 17, 2003)
Food Labeling—Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution Small Entity Compliance Guide (July 2001)

Sanitation Publications

Foods—Adulteration Involving Hard or Sharp Foreign Objects (February 1999) Compliance Policy Guide Chapter 5 Subchapter 555 Section 555.425
Defect Action Levels (DALS) (1995; Revised March 1997 and May 1998) Booklet. This list is compiled from FDA's Compliance Policy Guides on established ''current levels for natural or unavoidable defects in food for human use that present no health hazards.'' Source: Industry Activities Staff
Action Levels for Poisonous or Deleterious Substances in Human Food and Feed (2000) Source: Industry Activities Staff

Seafood Publications

Refusal of Inspection or Access to HACCP Records Pertaining to the Safe and Sanitary Processing of Fish and Fishery Products (July 2001) Source: Office of Seafood
Seafood HACCP Transition Policy (December 1999) Source: Office of Seafood Seafood List (1993) Booklet. FDA's guide to acceptable market names for seafood sold in the interstate commerce.
Fish and Fisheries Products Hazards and Control Guide 3rd Edition (2001) Source: Office of Seafood
HACCP Regulation for Fish and Fishery Products: Questions and Answers (1998) Source: Office of Seafood
Certification of Fish and Fishery Products for Export to the European Union and European Free Trade Association (November 2004)
Proposed Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Live and Perishable Fish and Fishery Products for Export to the European Union and the European Free Trade Association (November 2004)
Implementation of Section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term ''Catfish'' (December 2002)
Letter to Various Seafood Trade Associations Regarding the Labeling of Catfish (February 28, 2003)

Small Entity Compliance Guides Publications

What You Need to Know About Establishment and Maintenance of Records (December 2004)
What You Need to Know About Registration of Food Facilities (November 25, 2003)
What You Need to Know About Prior Notice of Imported Food Shipments (November 25, 2003)
Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Small Entity Compliance Guide (August 20, 2003)
Juice HACCP Small Entity Compliance Guide (April 4, 2003)
Structure/Function Claims: Small Entity Compliance Guide (January 9, 2002)
Food Labeling—Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution Small Entity Compliance Guide (July 2001)
Food Labeling—Serving Sizes Reference Amount for Baking Powder, Baking Soda, Pectin; Small Entity Compliance Guide (July 2001)
Statement of Identity, Nutrition Labeling, and Ingredient Labeling of Dietary Supplements Small Entity Compliance Guide (January 1999) Source: Industry Activities Staff
Iron-Containing Supplements and Drugs: Label Warning Statements: Small Entity Compliance Guide (October 17, 2003)

VI. Center for Veterinary Medicine (CVM)

For information on a specific guidance document or to obtain a hard copy, contact: Communications Staff, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–3800, *http://www.fda.gov/cvm/guidance/published.htm*.

The following is a list of CVM guidance documents that have been withdrawn from January 5, 2005, to January 5, 2006.

Title of Document	Date of Issuance	Date of Withdrawal
#78 Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	12/1999	1/2006

The following is a copy of a list of current CVM guidance documents obtained from the FDA Web site as of March 14, 2006.

CVM GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

1. Anticoccidial Guidelines replaced by Guideline #40
2. Anthelmintics Withdrawn 12/22/2004
3. General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals 06/21/05
4. Guidelines for Efficacy Studies for Systemic Sustained Release Sulfonamide Boluses for Cattle Withdrawn 12/22/2004
5. Stability Guidelines 12/90
6. Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC 10/20/71; rev. 03/19/76
8. Guidelines for Toxicological Investigations replaced by Guideline number 3
9. Preclearance Guidelines for Production Drugs Withdrawn pending revisions
10. Amendment of Section II(G)(1)(b)(4) of the Preclearance Guidelines 10/75
13. Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Free-Choice Feeds revision of Medicated Block 01/85
14. Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in Food Producing Animals Withdrawn 12/22/2004
15. Guideline and Format for Reporting the Details of Clinical Trials Using An Investigational New Animal Drug in Non-Food Producing Animals (2277) Withdrawn 12/22/2004
16. FOI Summary Guideline 05/85
17. Working Guidelines for Assigning Residue Tolerances replaced by Guideline # 3
18. Antibacterial Drugs in Animal Feeds: Human Health Safety Criteria Withdrawn 12/22/2004
19. Antibacterial Drugs in Animal Feeds: Animal Health Safety Criteria Withdrawn 12/22/2004
20. Antibacterial Drugs in Animal Feeds: Antibacterial Effectiveness Criteria Withdrawn 12/22/2004
21. Nutritional Ingredients in Animal Drugs and Feeds Nutritional Ingredients in Animal Drugs and Feeds (see Policy and Procedures Guide 1240.3420) rev. 03/93
22. Guideline Labeling of Arecoline Base Drugs Intended for Animal Use
23. Medicated Free Choice Feeds—Manufacturing Control 07/85
24. Guidelines for Drug Combinations for Use in Animals 10/83
25. Guidelines for the Efficacy Evaluation of Equine Anthelmintics Replaced by Guidance 109
26. Guidelines for the Preparation of Data to Satisfy the Requirements of Section 512 of the Act Regarding Animal Safety, Effectiveness, Human Food Safety and Environmental Considerations for Minor Use of New Animal Drugs (superceded by Guidance #61) 04/86; see also Guideline 61, below.
27. New Animal Drug Determinations (see Policy and Procedures Guide 1240.3500) 07/89
28. Animal Drug Applications Expedited Review Guideline (see Policy and Procedures Guide 1240.3135) 06/90
29. Guidelines for the Effectiveness Evaluation of Swine Anthelmintics 09/80
30. Guidelines for Anti-infective Bovine Mastitis Product Development replaced by guideline #49
31. Guidelines for the Evaluation of Bovine Anthelmintics 07/81
32. Guideline for Threshold Assessment replaced by Guideline number 3
33. Target Animal Safety Guidelines for New Animal Drugs 06/89
34. Biomass Guideline—Guideline for New Animal Drugs and Food Additives Derived From a Fermentation; Human Food Safety Evaluation replaced by Guideline number 3
35. Bioequivalence Guideline revised 10/09/02
36. Guidelines for Efficacy Evaluation of Canine/Feline Anthelmintics 07/85
37. Guidelines for Evaluation of Effectiveness of New Animal Drugs for Use in Poultry Feed for Pigmentation 03/84
38. Guideline for Effectiveness Evaluation of Topical/Otic Animal Drugs 03/84
39. Guideline on the Conduct of Clinical Investigations: Responsibilities of Clinical Investigators and Monitors for Investigational New Animal Drug Studies replaced by Guidance # 85
40. Draft Guideline for the Evaluation of the Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry 04/92
41. Draft Guideline: Formatting, Assembling, and Submitting New Animal Drug Applications 06/92
42. Series of four guidelines entitled ''Animal Drug Manufacturing Guidelines'' 1994
43. Draft Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances 10/95
45. Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle 08/93
48. Guidance for Industry: Submission Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products 11/94
49. Guidance Document For Target Animal Safety And Drug Effectiveness Studies For Anti-Microbial Bovine Mastitis Products (Lactating and Non-Lactating Cow Products) 04/96
50. Draft Guideline for Target Animal and Human Food Safety, Drug Efficacy, Environmental and Manufacturing Studies for Teat Antiseptic Products 02/93
51. Points to Consider Guideline—Development of a Pharmacokinetic Guideline Enabling Flexible Labeling of Therapeutic Antimicrobials ''Please see Guidance 66 for updated information.''
52. Assessment of the Effects of Antimicrobial Drug Residues from Food of Animal Origin on the Human Intestinal Flora, February 18, 2004 Replaced by Guidance 159
53. Guideline for the Evaluation of the Utility of Food Additives in Diets Fed to Aquatic Animals 05/94
54. Draft Guideline for Utility Studies for Anti-Salmonella Chemical Food Additives in Animal Feeds—See Final Guidance #80 06/94
55. Supportive Data for Cat Food Labels Bearing ''Reduces Urinary pH Claims: Guideline in Protocol Development 06/94
56. Protocol Development Guideline for Clinical Effectiveness and Target Animal Safety Trials 07/10/01
57. Master Files: Guidance for Industry for the Preparation and Submission of Veterinary Master Files 1995
58. Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors Withdrawn 12/22/2004; superceded by guidance #85

CVM GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

59. Guidance for Industry: How to Submit a Notice of Claimed Investigational Exemption in Electronic Format by E-Mail 01/17/06
60. Guidance For Industry: Animal Proteins Prohibited From Animal Feed; Small Entity Compliance Guide Replaced by Guidance 67, 68, 69, and 70
61. Guidance For Industry: FDA Approval of New Animal Drugs for Minor Uses and for Minor Species 04/99
62. Guidance for Industry: Consumer-Directed Broadcast Advertisements: Final Guidance 08/99
63. Guidance for Industry: Validation of Analytical Procedures: Definition and Terminology 07/99
64. Guidance for Industry: Validation of Analytical Procedures: Methodology: Final Guidance 07/99
65. Guidance for Industry: Industry-Supported Scientific and Educational Activities 11/97
66. Withdrawal of Guidance Document on Professional Flexible Labeling of Antimicrobial Drugs 01/02
67. Guidance for Industry: Small Entities Compliance Guide for Renderers 02/98
68. Guidance for Industry: Small Entities Compliance Guide for Protein Blenders, Feed Manufacturers, and Distributors 02/98
68. Guía de la FDA para la Industria Número 68: Para Mezcladores de Proteínas, Fabricantes de Alimentos para Animales y Distribuidores 02/09
69. Guía de la FDA para la Industria Número 69: Para Alimentadores de Animales Rumiantes con Operaciones de Mezclado de Alimentos en la Granja 02/98
69. Guidance for Industry: Small Entities Compliance Guide for for Feeders of Ruminant Animals with On-Farm Feed Mixing Operations 02/98
70. Guidance for Industry: Small Entities Compliance Guide for Feeders of Ruminant Animals without On-Farm Feed Mixing Operations 02/98
70. Guía de la FDA para la Industria Número70: Para Alimentadores de Animales Rumiantes sin Operaciones de Mezclado de Alimentos en la Granja 02/98
71. Guidance for Industry: Use of Human Chorionic Gonadotropin (HCG) as a Spawning Aid for Fish Rescinded
72. Guidance For Industry: GMP'S For Medicated Feed Manufacturers Not Required to Register and be Licensed with FDA 05/98
73. Guidance For industry: Stability Testing Of New Veterinary Drug Substances And Medicinal Products VICH GL3: FINAL GUIDANCE 09/99
74. Guidance for Industry: Stability Testing of New Veterinary Dosage Forms VICH GL4: FINAL GUIDANCE 09/99
75. Guidance For Industry: Stability Testing: Photostability Testing of New Veterinary Drug Substances and Medicinal Products: Final GUIDANCE 09/99
76. Guidance For Industry: Questions and Answers BSE Feed Regulations 07/98
77. Guidance for Industry: Interpretation of On-Farm Feed Manufacturing and Mixing Operations: DRAFT GUIDANCE Withdrawn 06/12/03
78. Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals Replaced by Guidance 152
79. Guidance for Industry #79—Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine (CVM)—Final Guidance July 2005
80. Studies to Evaluate the Utility of Anti-Salmonella Chemical Food Additives in Feeds 11/21/02
82. Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs—Final Guidance 10/28/02
83. Guidance for Industry: Chemistry, Manufacturing and Controls Changes to an Approved NADA or ANADA: DRAFT GUIDANCE 06/99
84. Guidance for Industry:Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling: DRAFT GUIDANCE 03/99
85. Guidance for Industry: Good Clinical Practices: VICH GL9, Final Guidance 05/09/01
86. Guidance for Industry—How to Submit a Notice of Final Disposition of Investigational Animals Not Intended for Immediate Slaughter in Electronic Format by E-Mail 1/17/06
87. Guidance for Industry—How to Submit a Notice of Intent to Slaughter for Human Food Purposes in Electronic Format by E-mail 01/17/06
88. Guidance for Industry—How to Submit a Request for a Meeting or Teleconference in Electronic Format by E-mail 01/17/06
89. Guidance for Industry—Environmental Impact Assessments (EIA's) For Veterinary Medicinal Products (VMP's)—Phase I, VICH GL6: Final Guidance 03/07/01
90. Guidance for Industry—Effectiveness of Anthelmintics: General Recommendations, Final Guidance—VICH GL7 (replaces 3/26/2001) 10/11/01
91. Guidance for Industry: International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal products (VICH); Final Guidance on Stability Testing for Medicated Premixes (VICH GL8); Availability 03/00
92. Guidance for Industry #92: Impurities In New Veterinary Drug Substances (Revision), VICH GL10 (R) , Draft Revised Guidance, January 5, 2006 01/05/06
93. Guidance for Industry #93—Impurities in New Veterinary Medicinal Products (Revised), Draft Revised Guidance—VICH GL11 (R), January 10, 2006 01/10/05
95. Guidance for Industry: Efficacy Of Anthelmintics: Specific Recommendations for Bovines: VICH GL12, Final Guidance 03/26/01
96. Guidance for Industry: Efficacy Of Anthelmintics: Specific Recommendations for Ovines: VICH GL13, Final Guidance 03/26/01
97. Guidance for Industry: Efficacy Of Anthelmintics: Specific Recommendations for Caprines: VICH GL14, Final Guidance 03/26/01
98. Dioxin In Anti-Caking Agents Used In Animal Feed And Feed Ingredients Revised 04/14/00
99. Guidance for Industry: Stability Testing of New Biotechnological/Biological Veterinary Medicinal Products—VICH GL17—Final Guidance 03/26/01
100. Guidance for Industry: Impurities: Residual Solvents in New Veterinary Medicinal Products, Active Substances and Excipients: VICH GL18, Final Guidance 05/15/01
102. Guidance for Industry: "Manufacture and Distribution of Unapproved Piperazine Products"—Revised 08/99
103. Guidance for Industry: Possible Dioxin/PCB Contamination of Drug and Biological Products 08/99
104. Guidance for Industry: Content and Format of Effectiveness and Target Animal Safety Technical Sections and Final Study Reports For Submission to the Division of Therapeutic Drugs for Non-Food Animals 07/10/01
105. Draft Guidance for Industry: Computerized Systems Used in Clinical Trials, Revision 1, Erratum, September 2004 09/04
106. The Use of Published Literature in Support of New Animal Drug Approval 08/31/00
107. Guidance for Industry: How to Submit a Protocol in Electronic Format by E-Mail 01/17/06
108. Guidance for Industry: How to Submit Information in Electronic Format by E-Mail 01/17/06
109. Guidance for Industry #109: Effectiveness of Anthelmintics: Specific Recommendations for Equine—VICH GL15—Final Guidance 06/27/02
110. Guidance for Industry #110: Effectiveness of Anthelmintics: Specific Recommendations for Porcine—VICH GL16—Final Guidance 06/27/02
111. Guidance for Industry #111: Effectiveness of Anthelmintics: Specific Recommendations for Canine—VICH GL19—Final Guidance 06/27/02
112. Guidance For Industry 112 : Fumonisin Levels in Human Foods and Animal Feeds—Final Guidance 11/09/01
113. Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Feline—VICH GL20—Final Guidance 06/19/02
114. Guidance for Industry: Effectiveness of Anthelmintics: Specific Recommendations for Poultry-Gallus Gallus—VICH GL21—Final Guidance 06/19/02

CVM GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

115. Guidance for Industry: Safety Studies for Veterinary Drug Residues in Human Food: Reproduction Studies—VICH GL22—Final Guidance 01/03/02
116. Guidance for Industry: Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Genotoxicity Testing—VICH GL23—Final Guidance 01/03/02
117. Guidance for Industry: Pharmacovigilance of Veterinary Medicinal Products: Management of Adverse Event Reports (AER's)—VICH GL24—DRAFT GUIDANCE 12/12/00
118. Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues—Final Guidance 05/01/03
119. Guidance for Industry and Reviewers: How the Center for Veterinary Medicine Intends to Handle Deficient Submissions Filed During the Investigation of a New Animal Drug—Final Guidance 08/29/02
120. Guidance for Industry #120—Veterinary Feed Directive Regulation 03/01/01
121. Guidance for Industry #121: Expedited Review for New Animal Drug Applications for Human Pathogen Reduction Claims 03/06/01
122. Guidance for Industry: Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores, May 18, 2004 Revised 11/09/04
123. Guidance for Industry 123—Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs (NSAIDS) for Use in Animals, Final, January 5, 2006 01/05/06
124. Guidance for Industry # 124: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering—Draft 01/17/01
126. Guidance for Industry #126—BACPAC I: Intermediates in Drug Substance Synthesis Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation, February 2001 02/01
132. Guidance for Industry: The Administrative New Animal Drug Application Process—Draft 11/06/02
135. Guidance for Industry: Validation of Analytical Procedures for Type C Medicated Feeds, Final 11/07/05
141. Guidance for Industry: Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Carcinogenicity Testing, VICH GL28, Final Guidance 05/24/04
142. CVM Guidance for Industry #142: Pharmacovigilance of Veterinary Medicinal Products: Management of Periodic Summary Update Reports (PSUs)—VICH GL29—Draft Guidance 12/12/01
143. CVM Guidance for Industry #143: Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms—VICH GL30—Draft Guidance 02/01/02
144. Guidance for Industry: Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals with Respect to Antimicrobial Resistance—VICH GL27, Final Guidance 04/27/04
145. Bioanalytical Method Validation 05/01
147. Guidance for Industry 147—Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing—VICH GL31, 11/12/03
148. Guidance for Industry: Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing—VICH GL32 Final Guidance 03/19/04
149. Guidance for Industry: Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing VICH GL33 05/18/04
150. Guidance for Industry: Status of Clove Oil and Eugenol for Anesthesia of Fish 06/11/02
151. Guidance for Industry: FDA Export Certificates 07/04
152. Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concern 10/23/03
153. Draft Guidance for Industry: Drugs, Biologics, and Medical Devices Derived From Bioengineered Plants for Use in Humans and Animals 09/02
154. Draft Guidance for Industry: 21 CFR Part 11; Electronic Records; Electronic Signatures, Maintenance of Electronic Records Withdrawn 02/25/03
155. Draft Guidance for Industry: 21 CFR Part 11: Electronic Records; Electronic Signatures; Electronic Copies of Electronic Records Withdrawn 02/04/03
156. Draft Guidance for Industry: Comparability Protocols—Chemistry, Manufacturing, and Controls Information; Availability 02/03
157. Guidance for Industry: Part 11, Electronic Records, Electronic Signatures—Scope and Application 08/03
158. Guidance for Industry—Use of Material from Deer and Elk in Animal Feed 09/15/03
159. Guidance for Industry: Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI—VICH GL–36, Final Guidance 02/10/05
160. Guidance for Industry—Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (Chronic) Toxicity Testing, VICH GL–37—Final Guidance 02/07/05
162. Draft Guidance for Industry—Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information 09/03
163. Draft Guidance for Industry : Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP 08/03
164. Guidance for Industry—PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance, September 2004 09/04
165. Draft Guidance for Industry: Providing Regulatory Submissions in Electronic Format—General Considerations 10/03
166. Guidance for Industry—Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMPs), Phase II, Final Guidance, VICH GL38, 01/09/06
167. Guidance for Industry: Prior Notice of Imported Food Questions and Answers 12/12/03
168. Guidance to Industry: Prior Notice of Imported Food: Harmonized Tariff Schedule Codes Flagged with Prior Notice Indicators 11/20/03
169. Guidance for Industry: Drug Substance: Chemistry, Manufacturing, and Controls Information, Draft Guidance 01/04
170. Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions, Final Guidance, March 15, 2004 03/15/04
171. Guidance for Industry on Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form Products and Type A Medicated Articles; Availability (Notice) 02/16/06
172. Guidance for Industry #172—Use of unapproved hormone implants in veal calves, April 2, 2004 Withdrawn 07/15/04
173. Guidance for Industry—Animal Drug Sponsor Fees Under the Animal Drug User Fee Act (ADUFA) Appendix 02/07/05
174. Guidance for Industry—Use of Material from BSE Positive Cattle in Animal Feed 09/30/04
176. Guidance for Industry #176—Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances—VICH GL–39, Draft Guidance—May 24, 2005 05/24/05
177. Guidance for Industry #177—Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products—VICH GL–40, Draft Guidance—May 24, 2005 05/24/05

VII. Office of the Commissioner/Office of Policy (OC/OP)

For information on a specific guidance document or to obtain a hard copy, contact:

For guidance documents pertaining to Good Clinical Practices: Good Clinical Practices Program, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, *http:///www.fda.gov/oc/gcp/guidance.html*.

For other guidance documents listed under OC/OP: Office of Policy, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, *http://www.fda.gov/opacom/morechoices/industry/guidedc.html*.

No OC/OP guidance documents were withdrawn from January 5, 2005, to January 5, 2006.

The following is a copy of a list of current OC/OP guidance documents obtained from the FDA Web site as of March 14, 2006.

OC/OP GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

Office of the Commissioner:

Draft Guidance: Using Electronic Means to Distribute Certain Product Information
Draft Guidance; Emergency Use Authorization of Medical Products
Conflict of Interest Disclosure Guidance
Small Business Guide to FDA
FDA Guidance—Financial Disclosure by Clinical Investigators, March 20, 2001
FDA Guidance for Industry on: Exports and Imports Under the FDA Export Reform and Enhancement Act of 1996 (Federal Register June 12, 1998)
Guidance for FDA and Industry: Direct Final Rule Procedures (Federal Register Nov. 21, 1997)
Final Guidance on Industry-Supported Scientific and Educational Activities (Federal Register Dec. 3, 1997)

Guidances and Information Sheets on Good Clinical Practice in FDA-Regulated Clinical Trials

Guidances
- FDA Information Sheet Guidances for Institutional Review Boards, Clinical Investigators, and Sponsors
- Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection
- Guidance for Industry: Acceptance of Foreign Clinical Studies
- Guidance for Industry: Available Therapy
- Guidance for Industry: Computerized Systems Used in Clinical Trials
- Guidance for Industry: Development and Use of Risk Minimization Action Plans
- Guidance for Industry Exploratory IND Studies
- Guidance for Industry: Financial Disclosure by Clinical Investigators
- Guidance for Industry: Food-Effect Bioavailability and Fed Bioequivalence Studies
- Guidance for Industry: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment
- Guidance for Industry: Guideline for the Monitoring of Clinical Investigators
- Guidance for Industry: Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs
- Guidance for Industry on Handling and Retention of Bioavailability and Bioequivalence Testing Samples; Availability
- Guidance for Industry: IND Exemptions for Studies of Lawfully Marketed Drug or Biologicial Products for the Treatment of Cancer
- Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions
- Guidance for Industry: IRB Review of Stand-Alone HIPAA Authorizations Under FDA Regulations
- Guidance for Industry on Part 11, Electronic Records; Electronic Signatures—Scope and Application
- Guidance on Pharmacogenomic Data Submissions
- Guidance for Premarketing Risk Assessment
- Guidance for Industry: Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications
- Guidance for Industry and Clinical Investigators on the Use of Clinical Holds Following Clinical Investigator Misconduct

ICH Guidances

- ICH E3: Guideline for Industry Structure and Content of Clinical Study Reports
- ICH E5: Ethnic Factors in the Acceptability of Foreign Clinical Data
- ICH E6: Good Clinical Practice: Consolidated Guidance
- ICH E10: Choice of Control Group and Related Issues in Clinical Trials

VIII. Office of Regulatory Affairs (ORA)

For information on a specific guidance document or to obtain a hard copy, contact: Office of Executive Operations, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *http://www.fda.gov/ora*.

The following is a list of ORA guidance documents that have been withdrawn from January 5, 2005, to January 5, 2006.

Title of Document	Date of Issuance	Date of Withdrawal
CPG—Sec. 160.800 Year 2000 (Y2K) Computer Compliance (CPG 7153.15)	April 26, 1999	March 8, 2005
CPG—Sec. 355.100 Cellutron Machine (CPG 7124.03)	May 31, 1990	March 10, 2005
CPG—Sec. 460.700 Controlled Release Dosage Form Drugs—Rate of Release of Active Ingredients (CPG 7132a.02)	January 1, 1973	August 19, 2005

The following is a copy of a list of current ORA guidance documents obtained from the FDA Web site as of March 14, 2006.

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)

Industry Assistance Reference

FDA contact sources for industry assistance and inquiries.

Medical Devices—Division of Small Manufacturers , International and Consumer Assistance (DSMICA)
Quality Systems/Good Manufacturing Practices Survey/Report
FDA Small Business Program Office
Regional Small Business Representatives
A Small Business Guide to FDA
FDA Industry focus page
Code of Federal Regulations
FDA Public Workshops

ORA Science Reference

Information related to the locations of the components, ORA laboratory, laboratory procedures, new techniques and useful analytical findings in support of FDA regulatory activities. ORA Science References are available for the following:

TOTAL DIET AND PESTICIDE RESEARCH CENTER—Information and materials relating to the FDA Total Diet Study Research.
LABORATORY MANUAL 2004—Agency policy for testing consumer products, training of laboratory staff, report writing, safety, research, review of private laboratory reports and court testimony. (Formerly: Laboratory Procedure Manual)
LABORATORY INFORMATION BULLETINS—Samples of collection of more than 3,000 bulletins describing new techniques and useful analytical findings by ORA laboratories in support of FDA regulatory activities.
PRIVATE LABORATORIES—Information concerning private laboratories and activities are included in this section.

ORA Compliance Reference

Revisions and Update List

Recent:

- 03/08/2006: Revised list to add 1 new member, Restricted List for Clinical Investigators
- 02/09/2006: Updated the program contact person (s) information on the following pages: http://www.fda.gov/ora/compliance_ref/bimo/default.htm http://www.fda.gov/ora/compliance_ref/bimo/background.html http://www.fda.gov/ora/compliance_ref/bimo/comparison_chart/preface.html
- 01/19/2006: Change in classification (Class)—Pine Acres Research Facility, Norton, MA
- 01/11/2006: Updated list to remove restriction for 1 member. Restricted List for Clinical Investigators
- 12/29/2005: Revised Restricted List for Clinical Investigators to add 1 new member
- 12/21/2005: Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990. Updated December 09, 2005 Edited list to correct typographical error in the initial of Dr. Farber on Disqualified/Totally Restricted List for Clinical Investigators Updated ''FDA AIP Contacts List'' (December 2005) on the Application Integrity Policy Information page
- 12/12/2005: Revised CPG Sec. 230.150—Blood Donor Classification Statement, Paid or Volunteer Donor Revised CPG Sec. 300.750—Class III Devices Subject to 515(b) Requirements (CPG 7124.18) Revoked CPG Sec. 460.700—Controlled Release Dosage Form Drugs—Rate of Release of Active Ingredients (CPG 7132a.02)
- 12/06/2005: Updated list to remove restriction for 1 member, 11/23/2005: Restricted List for Clinical Investigators
- 12/01/2005: Updated ''FDA AIP Contacts List'' (August 2005) on the Application Integrity Policy Information page
- 11/29/2005: Edited Compliance Policy Guides Sec. 160.100 and 118 pages in Chapter 5 to reflect FDA organization and contact changes.
- 11/18/2005: Added on-line link for compliance program 7385.014, Mammography Facility Inspections. Revised list to add 1 new member on Disqualified/Totally Restricted List for Clinical Investigators
- 11/14/2005: Revised list to add 1 new member, Disqualified/Totally Restricted List for Clinical Investigators
- 11/10/2005: Revised CPG Sec. 110.310—Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
- 11/03/2005: Revised list to remove one member from the Application Integrity Policy List
- 10/31/2005: Revised http://www.fda.gov/ora/compliance_ref/bimo/disqlist.htm to add one person and update the list contact person. Also, the contact person was updated on: http://www.fda.gov/ora/compliance_ref/bimo/asurlist.htm http://www.fda.gov/ora/compliance_ref/bimo/restlist.htm
- 09/15/2005: Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990 Updated September 15, 2005
- 09/13/2005: Revised list to remove one member on the Application Integrity Policy List
- 08/08/2005: Revoked by Federal Register notice on 09/24/1998 (63 FR 51074), CPG Sec. 615.100 Extra-Label Use of New Animal Drugs in Food-Producing Animals (CPG 7125.06)
- 08/04/2005: Updated the program contact person (s) information on the following pages: http://www.fda.gov/ora/compliance_ref/bimo/default.htm http://www.fda.gov/ora/compliance_ref/bimo/background.html http://www.fda.gov/ora/compliance_ref/bimo/comparison_chart/preface.html http://www.fda.gov/ora/compliance_ref/bimo/comparison_chart/preface.html http://www.fda.gov/ora/compliance_ref/bimo/glp/wh_list_intro.htm (and related GLP lists)
- 08/02/2005: Table for Veterinary Medicine compliance programs is updated to reflect on-line documents and/or information now supplied by the Center for Veterinary Medicine.
- 07/28/2005: Revised Debarment List, 07/28/2005—One person added.
- 07/18/2005: Re-numbered existing biologics compliance program 7341.002 ''Inspection of Tissue Establishments'' to 7341.002A and added new biologics compliance program 7341.002 ''Inspection of Human Cells, Tissues, and Cellular and Tissue-based Products (HCT/Ps).''
- 5/31/2005 Draft revised CPG Sec. 480–200—Expiration Dating of Unit-Dose Repackaged Drugs (CPG 7132b.11) Notice of Availability Draft Guidance
- 05/20/2005: Revised list to add 1 new member, Restricted List for Clinical Investigators
- 05/19/2005: Revised CPG Sec. 315.100 Illegal Interstate Commercial Shipment of Dentures (CPG 7124.07)
- 05/17/2005: Revised list to add 1 new member, Restricted List for Clinical Investigators

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

05/05/2005: Added new biologics compliance program 7345.848 Inspection of Biological Drug Products, and removed four programs that the new program supersedes: 7341.001, 7342.006, 7345.001, and 7345.002.
04/25/2005 Revised CPG 100.700 GWQAP Pre-Award Evaluation—Inadequate Information to Evaluate Prospective Supplier
04/25/2005 Revised CPG 390.300 Assessment of Civil Penalties Against Manufacturers and Importers of Electronic Products
04/18/2005: Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990 Updated April 18, 2005
04/13/2005 Revised CPG Sec. 560.400 Imported Milk and Cream—Federal Import Milk Act CPG 7119.05
04/12/2005: Revised Debarment List, 04/12/2005—One person added.
04/11/2005: Revised list to add 3 new members, Restricted List for Clinical Investigators
03/23/2005 Revised list to add one new member; and remove one Application Integrity Policy List
03/18/2005 Revised CPG Sec. 300.500—Reprocessing of Single Use Devices (CPG 7124.16)
03/10/2005 Revised 8 CPGs to make corrections/minor changes: Sec. 390.100; Sec. 390.400; Sec. 393.100; Sec. 396.300; Sec. 398.100; Sec. 398.325; Sec. 398.425; Sec. 398.700;
03/10/2005 Revoked CPG: Sec. 355.100—Cellutron Machine
03/08/2005 Revoked 03/08/2005, Compliance Policy Guide, Sec. 160.800 Y2K Computer Compliance
03/08/2005: Revised list to add 2 new members, Restricted List for Clinical Investigators
03/04/2005: Revised CPG Sec. 110.310—Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
02/18/2005: Draft revised CPG Sec. 310.210 ''Blood Pressure Measurement Devices (Sphygmomanometers)—Accuracy (CPG 7124.23) FR Notice of Availability Draft Revision
02/01/2005: Revised list to add 1 new member, Restricted List for Clinical Investigators
01/14/2005: Revised list to add 1 new member, Disqualified/Totally Restricted List for Clinical Investigators

2004 Revisions and Updates:

12/07/2004 Revised Debarment List, 12/07/2004—One person added. Published 12/02/2004.
11/18/2004 Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990 Updated November 18, 2004
11/16/2004 New CPG Sec. 400.210—Radiofrequency Identification Feasibility Studies and Pilot Programs
11/03/2004 Revised CPG Sec. 110.300—Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
11/02/2004 Revised CPG Sec. 110.310—Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
10/29/2004 Draft CPG (Not for Implementation), Sec. 560.400 ''Imported Milk and Cream—Federal Import Milk Act (CPG 7119.05).'' When finalized it will replace the existing CPG at Sec. 560.400. Comments due 30 days after date of publication in the Federal Register dated October 29, 2004
10/03/2004 Revised list to add 1 new member, Disqualified/Totally Restricted List for Clinical Investigators
08/31/2004 Edited Debarment List—at Uddin, Mohammad, added ''NMI'' to indicate that FDA records show no middle initial for this person.
08/16/2004 Revised CPG Sec. 110.310—Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
07/29/2004 Revised CPG Sec. 394.500—Importation of Television Products, Microwave Ovens, and Inherent Class I Laser Products for Investigation and Evaluation
07/29/2004 Replaced/Retitled CPG Sec. 560.750 Guidance Levels for Radionuclides in Domestic and Imported Foods (CPG 7119.14)
07/23/2004 Updated links to FDA Regulations (2004) on the Bioresearch Monitoring Information Page; links to laws enforced by FDA and related regulation on the Welcome to Compliance References page
06/24/2004 Revised CPG Sec. 110.310—Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
06/16/2004 AIP Procedures—procedures March 5, 1998
06/10/2004 Revised to update citations Sec. 690.300 Canned Pet Food (CPG 7126.18)
06/15/2004 Correction in classification (Class)—Charles River Laboratories, West Chester, OH
05/12/2004 John B. Najarian on Restricted List for Clinical Investigators
05/06/2004 March 2004 edition of the Regulatory Procedures Manual (RPM) published. New edition of FDA RPM is effective May 6th, 2004. All chapters have been changed except Chapter 9 ''Import Operations/Actions.''
04/09/2004 Corrected entry for Arthur Riba on Restricted List for Clinical Investigators
04/05/2004 Revised Application Integrity Policy List to add Plus Orthopedics, San Diego, California.
3/12/2004 Revised to update content of August 2000 paper edition: Sec. 490.100 Process Validation Requirements for Drug Products and Active Pharmaceutical Ingredients Subject to Pre-Market Approval CPG 7132c.08
02/23/2004 Revised list to add 1 new member, 02/23/2004: Restricted List for Clinical Investigators; Revised list to add 1 new member, 02/23/2004: Disqualified/Totally Restricted List for Clinical Investigators
02/13/2004 Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990 Updated February 9, 2004
2/9/2004 Edited two pages to conform text (reference) on Internet pages to August 2000 paper edition: CPG Sec. 515.700 Chocolate & Chocolate Liquor—Adulteration with Insect and Rodent Filth CPG 7105.11 CPG Sec. 515.775 Cocoa Powder, Press Cake—Adulteration with Insect and Rodent Filth CPG 7105.13
Draft CPG 1/14/2004 Draft CPG (Not for Implementation), Sec. 560.750 ''Guidance Levels for Radionuclides in Domestic and Imported Foods, Availability; and Draft Supporting Document, Supporting Document for Guidance Levels for Radionuclides in Domestic and Imported Foods.'' When finalized it will replace the existing CPG. Comments due March 15, 2004—The Draft Guidance—The Draft Guidance—Supporting Statement for Guidance Levels—Supporting Statement for Guidance Levels
Revoked 1/5/2004 Sec. 370.200 RIA Analysis of Hair to Detect the Presence of Drugs of Abuse CPG 7124.06

2003 Revisions and Updates:

New CPG Sec. 110.300—''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' is available at: http://www.cfsan.fda.gov/~furls/cpgreg.html.
Revised: Application Integrity Policy Committee Contact Persons list on 12/18/2003
Revised Application Integrity Policy List to add AGA Medical Corporation, Golden Valley, Minnesota

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Revised CPGM list on 12/18/2003 by • added new Drugs program 7356.002M, ''Inspections of Licensed Biological Therapeutic Drug Products'' • added new Veterinary Medicine program 7371.009, ''BSE/Ruminant Feed Ban Inspections'' • added on-line links for Drug programs: 7346.832 ''Pre-Approval Inspections/Investigations''; 7346.843, ''Post-Approval Audit Inspections''; 7356.002A, ''Sterile Drug Process Inspections''; 7356.002B, ''Repackers and Relabelers'', 7356.002C, ''Radioactive drugs'' and 7356.002E, ''Compressed medical gases'' • Corrected title of drug program 7356.002 ''Drug Manufacturing Inspections'' • corrected CPGM list by removing previously withdrawn Device programs 7385.002 ''Ionizing Radiation Use Control Laboratory Support'', 7385.003 ''Federal Facility Use Control and Equipment Performance Survey Program'', and 7386.006G ''WEAC Testing of Medical Devices for Conformance to Voluntary Standards'' • corrected Device program numbers 7382.014 to 7385.014 and 7385.004 to 7386.009.
New CPG Sec. 110.310—''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' is available at: http://www.cfsan.fda.gov/~pn/cpgpn.html.
Revised Debarment List, 10/22/2003—One person added. Published 10/23/03.
Revised list to add 2 new members, 10/17/2003: Disqualified/Totally Restricted List for Clinical Investigators. Published 10/21/03.
Revised Debarment List, 10/10/2003—debarment terminated for one person; three people added. Published 10/10/03.
Added pdf version of Guideline for the Monitoring of Clinical Investigations, Jan., 1988. Published 9/30/03.
Revised list to add 2 new members, 09/09/2003: Restricted List for Clinical Investigators. Published 09/10/03.
Revised 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990, Updated 08/11/2003. Published 09/04/03.
Revised Debarment List, 8/8/2003—one person added. Published 8/15/03.
Revised Sec. 608.400—Compounding of Drugs for Use in Animals. Published 7/14/03.
Revised 3 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990, Updated 01/27/3. Published 7/2/03.
New CPGM link to Compliance Programs published by CBER: Inspection of Source Plasma Establishments and Inspections of Licensed Vaccines. Published 6/6/03.
Updated ORA page on Electronic Records/Signatures, 21 CFR Part 11. Published 6/6/03.
Revised Debarment List, 5/9/2003—one person added. Published 5/30/03.
Revoked effective 02/19/2003: Compliance Policy Guide, Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17). See: 68 FR 8775 02/25/2003. Published 5/30/03.
Revised list to update Dr. J.L. Williams, 5/15/2003: Disqualified/Totally Restricted List for Clinical Investigators. Published 5/23/03.
Replaced Reference: Good Laboratory Practice (GLP) Final Rule, 12/22/1978. Published 5/23/03.
Revised—Four Lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990, Updated 03/06/2003. Published 5/1/03.
Revised Application Integrity Policy List to remove Gliatech, Inc., Beachwood, OH; and Solvay Pharmaceuticals, Inc., Beaudette, MN, and Marietta, GA, April 2003.
Revised list to add new member, 04/10/2003: Disqualified/Totally Restricted List for Clinical Investigators.
Revised Debarment List on 04/09/2003—One person removed (Hernandez, Delfina); One correction inserted (Lai, Elaine).
Revised: Application Integrity Policy Committee Contact Persons list. Updated 3/31/2003.
Revised 03/23/2003, HTML/online links changed for Biologics Compliance Programs 7342.006, 7342.008. and 7345.001 (CBER). No content was changed.
New CPGM, 03/19/2003: Biologics Compliance Program March 2003, 7341.002, Inspection of Tissue Establishments (CBER).
Revoked effective 02/19/2003—Compliance Policy Guide, Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17) See: 68 FR 8775 02/25/2003.
Revised list to add new member, 02/10/2003: Disqualified/Totally Restricted List for Clinical Investigators.
Revised Debarment List on 01/13/2003—2 people added.

2002 Revisions and Updates

Revised list to add new member, 10/28/2002: Disqualified/Totally Restricted List for Clinical Investigators.
Edited lists 12/16/2002: 1) Inactive Labs List and 2)Active Tox Labs List
Revised Debarment List on 12/03/2002—one person added
Typographical errors (1 per page) 11/27/2002: CPGuides Manual—Sec 555.425—Foods—Adulteration Involving Hard or Sharp Foreign Objects; and Sec. 515.350 Candy—Mixed with Trinkets and Sold in Vending Machines (CPG 7105.04)
Edited links 11/27/2002: 21 CFR Part 11 Guidance Documents Dockets Established—Topics for Guidance Development Revised 11/14/2002: Sec. 555.600 Filth *from Insects, Rodents, and Other Pests* in Foods (CPG 7120.18)
Updated 11/14/2002: 4 lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990
Revoked effective 11/12/2002: Sec. 398.475 Minimum X-Ray Field Size for Spot-Film Operation of Fluoroscopic Systems with Fixed SID and Without Stepless Adjustment of the Field Size (CPG 7133.17)
Revised 11/13/2002 Debarment List—3 people added
Revised 2 lists to add new or update member(s), 10/16/2002: Disqualified/Totally Restricted List for Clinical Investigators and Restricted List for Clinical Investigators
Revoked effective 10/07/2002, Sec. 300.700 Direct Reference Authority for Class III Medical Devices Without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA) (CPG 7124.30) per Federal Register, 09/05/2002 (67 FR 56850)
Revised Subchapter Import for Export in Chapter 9 of Regulatory Procedures Manual. 09/13/2002.
New—CryoLife, Inc., Kennesaw, GA, 08/13/2002. Order for Retention, Recall, and/or Destruction
New—Four Lists of Nonclinical Laboratories Inspected Since Fiscal Year 1990. Updated 08/2002
Revised list to add new member, 08/7/2002: Disqualified/Totally Restricted List for Clinical Investigators
Revoked effective on 08/07/2002: Sec. 315.200 Status of Dental Supplies such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05) See 67 FR 45129, 07/08/2002
Revised list to add new member, 06/27/2002: Restricted List for Clinical Investigators
Revised list to add new member, 06/27/2002: Disqualified/Totally Restricted List for Clinical Investigators
Reissued 05/29/2002, Sec. 460.200 Pharmacy Compounding
Revoked effective on 06/20/2002, Sec. 391.100 Advertisement Literature for High-Intensity Mercury Vapor Discharge Lamps (CPG 7133.13)
Revoked effective on 06/20/2002, Sec. 396.100 Applicability of the Sunlamp Performance Standard To UVA Tanning Products (CPG 7133.16)
Corrected 05/16/2002, Sec 575.100 Pesticide Residues...Heptachlor table
New CPG Sec. 230.150 Blood Donor Classification Statement, Paid or Volunteer Donor issued 05/07/2002
Revised BioResearch Monitoring Information references added or updated 05/16/2002
Revised Debarment List on 05/07/2002—person added
Revised Compliance Program Manual 04/26/2002 page—page text and links were updated
Edited Debarment List on 04/09/2002

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

Revised as Draft 05/29/2002—Sec. 345.100 Male Condom Defects (CPG 7124.21) for comment
Edited page to remove dates that may become obsolete, 04/2/2002: Application Integrity Policy Information.
Revised list to add new member, 04/02/2002: Disqualified/Totally Restricted List for Clinical Investigators
Revised list to add new member, 02/20/2002: Application Integrity Policy List
Revised lists to align members to groups, 01/15/2002: a) Restricted List for Clinical Investigators b) Disqualified/Totally Restricted List for Clinical Investigators
2001 Revisions and Updates
Revised as Draft Dec 18, 2001—Sec. 555.600 Filth *from Insects, Rodents, and Other Pests* in Foods (CPG 7120.18)
New CPG Oct., 2001—Sec. 510.150 Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin
Reformat CPG Oct., 2001—Sec. 570.425 Tree Nuts—Adulteration Involving Rejects (Insect Infestation, Moldy, Rancid, Otherwise Decomposed, Blanks, and Shriveled) (CPG 7112.05)
Final CPG April 2001—Sec. 615.115 Extra-Label Use of Medicated Feeds for Minor Species
New CPG April 2001, Sec. 555.250 Statement of Policy for Labeling and Preventing Cross-contact of Common Food Allergens
New RPM Chapter 5, March, 2001, Subchapter Civil Money Penalties, Reduction of Civil Money Penalties for Small Entities
New RPM Chapter 9, January 2001, Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs Service in Cases Involving Imported Food
New RPM Chapter 9, January 2001, Secured Storage
2000 Revisions and Updates
Draft CPG—December 2000, Sec. 230.150 Blood Donor Incentives
Revised 8/10/2000, Sec. 540.650 Uneviscerated Fish Products that are Salt-cured, Dried, or Smoked (CPG 7108.17)
New 06/29/2000, Sec. 100.950 International Parnership Agreements for Compliance Activities—Agreements among the USFDA, Foreign Government Agencies, and Foreign or Domestic Trade Associations and/or Other Organizations
Deleted 07/03/2000, Sec. 405.100 Prescriptions Prepared from Certified Antibiotics (CPG 7122.01)
Deleted 07/03/2000, Sec. 405.200 Export of Uncertified Antibiotics (CPG 7122.02)
Deleted 07/03/2000, Sec. 405.210 Returned Antibiotics Exported Under 801(d) of the Act (CPG 7122.03)
Revised 05/01/2000, Sec. 651.100 Ethylenediamine Dihydroiodide (EDDI) (CPG 7125.18)
Revised 04/14/2000, Section 110.100, Certification for Exports (CPG7150.01)
Deleted 03/28/2000, Section 215.100, IND Filings: Completion of Applicable...
Reissued 03/22/2000, Section 257.100, Deferral of Source Plasma Donors Due to Red Cell Loss During Collection of Source Plasma by Automated Plasmapheresis
New 03/06/2000, Section 252.110, Volume Limits for Automated Collection of Source Plasma
Deleted (Revoked) 01/24/2000, Sec. 305.100 Acupuncture Devices and Accessories (CPG 7124.11)
1999 Revisions and Updates
Draft CPG—08/04/1999, Section 615.115 Use of Medicated Feeds for Minor Species
July 9, 1999, Compliance Policy Guide 230.140, Biologics, Evaluation and Processing Post Donation Information Reports
The ''Draft Civil Money Penalty Reduction Policy for Small Entities'' published in the Federal Register (FR) on May 18, 1999. See final copy of the RPM Subchapter March 20, 2001
New 5/13/1999, Compliance Policy Guide, Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17)
New, 4/26/1999, Compliance Policy Guide, Y2K Computer Compliance
Draft Revised CPG, 4/9/1999, Regulatory Policy on the Disposition of Publications that Constitute Labeling (CPG 7153.13) (Level I guidance document (see 62FR8961 2/27/97)) Not for Implementation

Welcome to Inspection Reference

This page includes information provided to FDA investigators and inspectors to assist them in their daily activities.

Field Management Directives—The primary vehicle for distributing procedural information/policy on the management of Office of Regulatory Affairs (ORA) field activities.
Guides to Inspections of...—Guidance documents written to assist FDA personnel in applying FDA's regulations, policies and procedures during specific types of inspection or for specific manufacturing processes. Note: These documents are reference material for investigators and other FDA personnel. The documents do not bind FDA and do not confer any rights, privileges, benefits or immunities for or on any person(s). An alternative approach may be used if such an approach satisfies the applicable statutes, regulations or both. Updated: June 2005
BIOTECHNOLOGY
BIOTECHNOLOGY INSPECTION GUIDE (11/91)
BIOLOGICS
BLOOD BANKS (9/94)
SOURCE PLASMA ESTABLISHMENTS (Rev 4/01)
INFECTIOUS DISEASE MARKER TESTING FACILITIES (6/96)
VIRAL CLEARANCE PROCESSES FOR PLASMA DERIVATIVES
COMPUTER ISSUES
COMPUTERIZED SYSTEMS IN DRUG ESTABLISHMENTS (2/83)
COMPUTERIZED SYSTEM IN THE FOOD PROCESSING INDUSTRY
GLOSSARY COMP. SYSTEMS. SOFTWARE DEVELOPMENT TERMINOLOGY (8/95)
DEVICES
QUALITY SYSTEMS
ELECTROMAGNECTIC COMPATIBILITY ASPECTS OF MEDICAL DEVICE QUALITY SYSTEMS
BIORESEARCH MONITORING INSPECTIONS OF IN VITRO DIAGNOSTIC DEVICES
MAMMOGRAPHY QUALITY STANDARDS ACT AUDITOR'S GUIDE
MEDICAL DEVICE MANUFACTURERS
DRUGS
BULK PHARMACEUTICAL CHEMICALS (9/91)
HIGH PURITY WATER SYSTEMS (7/93)
LYOPHILIZATION OF PARENTERALS (7/93)
MICROBIOLOGICAL. PHARMACEUTICAL QUALITY CONTROL LABS (7/93)
PHARMACEUTICAL QUALITY CONTROL LABORATORIES (7/93)

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

VALIDATION OF CLEANING PROCESSES (7/93)
DOSAGE FORM DRUG MANUFACTURERS—CGMP'S (10/93)
ORAL SOLID DOSAGE FORMS PRE/POST APPR. ISSUES (1/94)
STERILE DRUG SUBSTANCE MANUFACTURERS (7/94)
TOPICAL DRUG PRODUCTS (7/94)
ORAL SOLUTIONS AND SUSPENSIONS (8/94)
FOODS COSMETICS
ALLERGY INSPECTION GUIDE (April, 2001)
ASEPTIC PROCESSING AND PACKAGING FOR THE FOOD INDUSTRY
NUTRITIONAL LABELING AND EDUCATION ACT (NLEA) REQUIREMENTS (8/94–2/95)
COSMETIC PRODUCT MANUFACTURERS (2/95)
COMPUTERIZED SYSTEMS IN THE FOOD PROCESSING INDUSTRY
GRAIN PRODUCT MANUFACTURERS
INTERSTATE CARRIERS AND SUPPORT FACILITIES (4/95)
DAIRY PRODUCT MANUFACTURERS (4/95)
MISCELLANEOUS FOOD PRODUCTS—VOL. 1 (5/95)
MISCELLANEOUS FOOD PRODUCTS—VOL. 2 (9/96)
LOW ACID CANNED FOOD MANUFACTURERS Part 1—ADMINISTRATIVE PROCEDURES/SCHEDULED PROCESSES
LOW ACID CANNED FOOD MANUFACTURERS Part 2—PROCESSES/PROCEDURES
LOW ACID CANNED FOOD MANUFACTURERS Part 3—CONTAINERS/CLOSURES (11/98)
ACIDIFIED FOOD MANUFACTURERS
TRACEBACK OF FRESH FRUITS AND VEGETABLES IMPLICATED IN EPIDEMIOLOGICAL INVESTIGATIONS
SALMONELLA ENTERITIDIS (SE) GUIDE TO TRACEBACK IN EGGS (07/03/2003)
MISCELLANEOUS
FOREIGN MEDICAL DEVICE MANUFACTURERS (9/95)
FOREIGN PHARMACEUTICAL MANUFACTURERS (5/96)

IOM: Investigations Operations Manual 2006 Centennial Edition—Primary procedure manual for FDA personnel performing inspections and special investigations.

Guide to International Inspections and Travel—Procedure manual for FDA personnel performing inspections and other FDA-related activities abroad.

Inspection Technical Guides—Guidance documents that provide FDA personnel with technical background in a specific piece of equipment. or a specific manufacturing or laboratory procedure, or a specific inspectional technique, etc.

1. Introductory IssueAll Programs 1/20/72
2. Steam Generation in Canneries Food Canneries 2/11/72
3. Steam Distribution for Retort Venting in Food Canneries Food Canneries 3/03/72
4. New Equipment Kenics Static Mixers Food, Drug and Cosmetic 3/20/72
5.Ethylene Oxide Sterilization 1. Calculation of Initial Gas Concentration Drugs, Sterile Devices 6/09/72
6. Leak Testing Sealed Ampuls of Parenteral Solutions Drugs, Human and Veterinary Injectable Vitamins 4/28/72
7. Sterilizing Symbols (D, Z, F) Low Acid Canned Foods 1/09/72
8. ''Package Unit'' Italian Flour Mills Cereal Flours & Related Products 12/14/72
9. Polariscope Sterile Packaging—Foods, Drugs, Devices, Hardened Lenses 5/21/73
10. Diathermy Medical Devices 5/21/73
11. Steam Pressure for Retorts and Autoclaves Sterile Drugs and Devices Low Acid Canned Foods, Biologics 6/29/73
12. Stroboscope Food, Drug, Device, Manufacture and Packaging 8/08/73
13. Field Submission of Articles All Programs 9/05/73 (8/03/84 Revised)
14. Thermocouple Surface Pyrometers Food Canneries12/20/73
15. Common Valves Used in Process Fluid Systems Sterile Drugs, Devices, Low Acid Canned Foods and Biologics 1/15/74
16. A.T.I. Steam Activated Heat Sensitive Indicators Food, Drugs, Medical Devices 3/08/74
17. New Source of Lead and Other Contamination Various Foods and Drugs 6/18/74
18. Ultrasound in the Food, Drug, and Device Industries Food, Drugs, and Medical Devices 3/03/75
19. Screening Electronic Components Medical Devices 4/20/75
20. Hermetically Sealed Electronic Component Leak Detection Medical Devices 7/18/75
21. Noise Control Mufflers for Bleeders on Retorts and Sterilizers Food, Drugs 9/15/75
22. Ground Fault Circuit Interrupter All Programs, Personnel Safety 3/05/76
23. The Computer in FDA Regulated Industries Foods, Drugs, and Medical Devices 5/21/76
24. Air Velocity Meters Sterile Drugs and Devices, Foods and Cosmetics 7/30/76
25. Ethylene Oxide Sterilization 2. Graphical Aid to Determine Gas Concentration Sterile Devices, Drugs 9/01/76
26. Evaluation of Production Cleaning Processes for Electronic Medical Devices—Part 1, Contaminants Medical Devices 1/07/77
27. Evaluation of Production Cleaning Processes for Electronic Medical Devices—Part II, Cleaning Solvents Medical Devices 1/07/77
28. Evaluation of Production Cleaning Processes for Electronic Medical Devices—Part III, Methods Medical Devices 1/07/77
29. The Computer in FDA Regulated Industries—Part II Computer Hardware All Programs 9/22/77
30. The Nation is Going Metric (rescinded) All Programs 12/02/77
31. Electronic Components—Resistors Medical Devices, Radiological Health 1/16/78
32. Pyrogens, Still a Danger Parenterals, Biologicals, Devices, Drugs 1/12/79
33. Use of the Texas Instruments Model 59 Programmable Calculator in the Enforcement of the Diagnostic X-ray Performance Standard X-Ray Field Testing 7/12/79
34. Heat Exchangers to Avoid Contamination Drugs, Diagnostic Products Biologics 7/31/79
35. Reliability of Manufactured Products Medical Device, Radiological Health Products 9/26/80
36. Reverse Osmosis Drugs, Medical Devices and Diagnostic Products 10/21/80
37. Temperature Sensors in the Regulated Industry Foods, Drugs, Biologics, Medical Devices and Diagnostic Products 1/7/83
38. Industrial Applications of New Biochemical Technolgy All Programs 8/1/83
39. Water Activity (a{{w}}) in Foods Foods 4/16/84
40. Bacterial Endotoxins/Pyrogens Drugs and Devices 3/20/85
41. Expiration Dating and Stability Testing for Human Drug Products Drugs 10/18/85

ORA GUIDANCE DOCUMENTS (OBTAINED FROM THE FDA WEB SITE ON MARCH 14, 2006)—Continued

42. Tin Whiskers—Problems, Causes, and Solutions Medical Devices 3/14/86
43. Lyophilization of Parenterals Drugs, Biologics, Diagnostics 4/18/86
44. Radiation Protection Terminology Foods 5/15/86
45. Circular Temperature Recording Chart Measurements All Programs 2/20/87
46. Water for Pharmaceutical Use Drugs, Biologics, Medical Devices 12/31/86
47. Measurement of Relative Humidity in the ETO Process Drugs and Medical Devices 4/30/87
48. Microbiological Contamination of Equipment Gaskets with Product Contact All Programs 12/31/86
49. Stock Rotomat Foods 5/30/87
50. Capacitor Medical Devices/Radiological Health 10/23/87
51. Electronic Relays Medical Devices/Radiological Health 11/10/87
52. Voice Recognition Systems GLP and Devices 11/10/87

Medical Device GMP Reference Information—(link to page maintained by CDRH)
QS Regulation/Design Controls

Dated: March 7, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–2941 Filed 3–27–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference: Multivitamin/Mineral Supplements and Chronic Disease Prevention; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''State-of-the-Science Conference: Multivitamin/Mineral Supplements and Chronic Disease Prevention'' to be held May 15–17, 2006, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on May 15 and 16, and at 9 a.m. on May 17, and will be open to the public.

It is estimated that more than one-third of American adults take multivitamin/mineral (MVM) supplements regularly. Recommendations regarding supplement use from expert groups vary widely, as does the strength of the evidence supporting such guidelines. As more and more Americans seek strategies for maintaining good health and preventing disease, and as the marketplace offers an increasing number of products to fill that desire, it is important that consumers have the best possible information to inform their choices.

The Office of Dietary Supplements and the Office of Medical Applications of Research of the NIH will convene a State-of-the-Science Conference on Multivitamin/Mineral Supplements and Chronic Disease Prevention, May 15 to 17, 2006, in Bethesda, Maryland. The goal of the conference is to assess the evidence available on MVM use and outcomes for chronic disease prevention in adults and to make recommendations for future research. Specifically, the conference will explore the following key questions:

- What are the current patterns and prevalence of the public's use of MVM supplements?
- What is known about the dietary nutrient intake of MVM users versus non-users?
- What is the efficacy of single vitamin/mineral supplement use in chronic disease prevention?
- What is the efficacy of MVM in chronic disease prevention in the general population of adults?
- What is known about the safety of MVM for the generally healthy population?
- What are the major knowledge gaps and research opportunities regarding MVM use?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Wednesday, May 17, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later.

The primary sponsors of this meeting are the NIH Office of Dietary Supplements and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667, or by sending e-mail to consensus@mail.nih.gov. American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: March 20, 2006.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. E6–4437 Filed 3–27–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference: Tobacco Use: Prevention, Cessation and Control; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''State-of-the-Science Conference on Tobacco Use: Prevention, Cessation, and Control'' to be held June 12–14, 2006, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on June 12 and 13, and at 9 a.m. on June 14, and will be open to the public.

Tobacco use remains the Nation's leading preventable cause of premature death. Each year, more than 440,000 Americans die from disease caused by tobacco use, accounting for one in every five deaths. Cigarette smoking alone is responsible for more than 30 percent of cancer deaths annually in the U.S., and

smoking is also an important cause of death from heart disease, stroke, and chronic obstructive pulmonary disease. Currently, there are an estimated 44.5 million (21 percent) adult smokers and an estimated 3.75 million (22%) high school student smokers in the U.S. Cigarettes are the predominant form of tobacco consumed; however, other forms of tobacco, such as smokeless tobacco, cigars, and pipes, are also used. In addition to the toll in human lives, tobacco use places an enormous economic burden on society. For 1995 to 1999, estimated annual smoking-attributable economic costs in the U.S. were $75.5 billion for direct medical care for adults and $81.9 billion for lost productivity.

Despite enormous progress in reducing the prevalence of tobacco use in the U.S, it is unlikely that the *Healthy People 2010* objectives of reducing smoking prevalence to 12 percent or less in adults and 16 percent or less in youth will be reached on schedule. A better understanding of how effective strategies for prevention and treatment can be developed and implemented across diverse segments of the population is crucial to accelerate progress; meeting the *Healthy People 2010* prevalence goals is projected to prevent an additional 7.1 million premature deaths after 2010.

For this reason, the National Cancer Institute and the National Institutes of Health's Office of Medical Applications of Research will sponsor a State-of-the-Science Conference on Tobacco Use: Prevention, Cessation, and Control, June 12–14, 2006, in Bethesda, Maryland. The key questions to be addressed at the State-of-the-Science Conference are:

- What are the effective population- and community-based interventions to prevent tobacco use in adolescents and young adults, including among diverse populations?
- What are the effective strategies for increasing consumer demand for and use of proven individually oriented cessation treatments, including among diverse populations?
- What are the effective strategies for increasing the implementation of proven population-level tobacco-use cessation strategies, particularly by healthcare systems and communities?
- What is the effect of smokeless-tobacco-product marketing and use on population harm from tobacco use?
- What is the effectiveness of prevention and of cessation intervention in populations with co-occurring morbidities and risk behaviors?
- What research is needed to make the most progress and greatest public health gains nationally and internationally?

At the conference, invited experts will present information pertinent to these questions, and a systematic literature review prepared under contract with the Agency for Healthcare Research and Quality (AHRQ) will be summarized. Conference attendees will have ample time to ask questions and provide statements during open discussion periods.

After weighing the scientific evidence, an unbiased, independent panel will prepare and present a State-of-the-Science statement addressing the key conference questions. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later.

This conference is intended for researchers interested in tobacco prevention, cessation, and control; health care professionals; health care system professionals; health policy experts; public health practitioners; and interested members of the public.

The primary sponsors of this meeting are the NIH National Cancer Institute and the NIH Office of Medical Applications of Research; there are fifteen cosponsors from NIH and other HHS agencies.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667, or by sending e-mail to *consensus@mail.nih.gov*. American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov*.

Please note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm*.

Dated: March 20, 2006.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. E6–4438 Filed 3–27–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Customs Modernization Act Recordkeeping Requirements

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: CBP has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Modernization Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58453) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 27, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component,

including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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, *e.g.*, permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651–0076.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 4,695.

Estimated Time per Respondent: 1,037 hours.

Estimated Total Annual Burden Hours: 4,870,610.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: March 21, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–4476 Filed 3–27–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Petition to Remove Conditions on Residence; Form I–751. OMB Control No. 1615–0038.

The Department of Homeland Security, U.S. Citizenship and Immigration Services submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This information was previously published in the **Federal Register** on January 23, 2006 at 71 FR 3524. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control No. 1615–0038 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–751, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Persons granted conditional residence through marriage to a United States citizen of permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 respondents at 2 hours and 20 minutes (2.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 275,312 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: March 23, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–2900 Filed 3–27–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for Citizenship and Issuance of Certificate under Section 322; Form N–600K, 1615–0087.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 17, 2006, at 71 FR 2559, allowing for a 60-day public comment period. USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0087 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600K; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine eligibility for the requested immigration benefit of citizenship. The form serves the purpose of standardizing requests for the benefit, and will ensure that the basic information required to assess eligibility is provided by the applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: March 23, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–2901 Filed 3–27–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application to Register Permanent Residence or Adjust Status; Form I–485. OMB Control No. 1615–0023.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 23, 2006, at 71 FR 3523, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0023 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection will be used to request and determine eligibility for adjustment of permanent residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–485; 583,921 respondents at 6.25 hours per response. Supplement A; 33,112 respondents at .216 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Form I–485 annual burden hours are 3,649,506. Supplement A annual burden hours are 7152.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: March 23, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–2902 Filed 3–27–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Refugee/Asylee Relative Petition, Form I–730. OMB Control No. 1615–0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 23, 2006, at 71 FR 3522. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 26, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0037 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: March 23, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–2903 Filed 3–27–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–04]

Notice of Proposed Information Collection for Public Comment: PHA Plans Standard Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, 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 30, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Plan.

OMB Control Number: 2577–0226.

Description of the Need for the Information and Proposed Use: This proposed rules extends the use of the previously OMB approved template for the Public Housing Five-Year and Annual Plan. Public housing Agencies (PHAs) submit an annual plan for each fiscal year for which the PHA received tenant-based assistance and public housing operating subsidy. This plan provides a framework for local accountability and to the extent possible, an easily identifiable source by which public housing residents, participants in the housing choice voucher program, and other members of the public may locate housing and services. The PHA plan is a Web-based application (allowing PHAs to retrieve the applicable templates) that allows PHAs to provide their plans to HUD via the Internet. The system allows HUD to track plans every year with limited reporting and any changes from the previous submission.

Agency Form Number: HUD–50075, HUD–50075 SA, HUD–50075 SF.

Members of the Affected Public: State or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

	Standard 5-year plan & annual plan	Standard annual plan (years 1–4)	Stream-lined annual plan	Troubled agency annual plan	Deregulated streamlined annual plan (yrs 1–4)	Deregulated streamlined 5-year plan & annual plan
PHA Plan Component and burden hours by plan type	.....	.....	(1)	.....	(2)	(2)
PHA Identification Page	0.1	0.1	0.1	0.1	0.1	0.1
5-Year plan (24 CFR 903.5)	1	0	0	0	0	0
ii. Executive Summary of the Annual PHA Plan	0	0	0	0	0	0
Summary of Policy & Program Changes (Small PHA Update)	0	0	0	0	0	0
List of Policy and Program Changes (deregulated and streamlined plan)	0	0	0	0	1	0
iii. ANNUAL PLAN TABLE OF CONTENTS	0.25	0.25	0.25	0.25	0.1	0.1
1. Housing Needs	4	4	4	0	0	4
2. Financial Resources	2	2	2	2	0	2
3. Policies on Eligibility, Selection, and Admissions	2	2	2	2	.....	2
Site-based waiting lists (only)	.....	.....	.....	.....	1	
4. Rent Determination Policies	1	1	1	1	.....	1
5. Operations & Management	1	1	0	1	0	0
6. Grievance Procedures	1	1	0	1	0	0
7. Capital Improvements Needs	16	16	16	16	8	8
8. Demolition and Disposition	1	1	1	1	0	1
9. Designation of Housing	1	1	0	1	0	0
10. Conversions of Public Housing	1	1	1	1	0	0
11. Homeownership (all)	1	1	0	0	.....	1
Section 8(y) only 1	.....	.....	.....	.....	0.5	.....
12. Community Service and Self-Sufficiency	2	2	0	2	0	2
13. Crime and Safety	0.5	0.5	0.5	0.5	0	0.5

	Standard 5-year plan & annual plan	Standard annual plan (years 1–4)	Stream-lined annual plan	Troubled agency annual plan	Deregulated streamlined annual plan (yrs 1–4)	Deregulated streamlined 5-year plan & annual plan
14. Pets	1	1	1	0	0	0
15. Civil Rights Certification	0.5	0.5	0.5	0.5	0.5	0.5
16. Audit	0.5	0.5	0.5	0.5	0	0
17. Asset Management	2	2	0	2	0	0
18. Other Information: Progress meeting 5-Year goals; Resident membership of Board; RAB recommendations and PHA response; PHA statement of consistency with Consolidated Plan; PHA criteria for substantial deviations and significant amendments; List of supporting documents	8	8	8	8	0	8
Use of Project-based vouchers	0.5	0.5	0.5	0.5	0.5	0.5
Budget/MOA/plan to improve (troubled PHAs only)	0	0	0	2	0	0
BURDEN HOURS Per Response	47.35	46.35	38.35	42	9.5	30.7
Number of Respondents This Plan Type	632	132	500	83	3,385	3,385
Total Burden Hours All Respondents This Plan Type	29,925	[3] 6,118	[3] 19,175	[3] 3,486	[3] 32,157	103,919.5
Total burden over five years	29,925	24,472	76,700	13,944	128,628	103,920

[1] High Performer.
[2] Small PHA.
[3] Per year.

Status of the Proposed Information Collection: Reinstatement of previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 17, 2006.

Glenda N. Green,

Deputy Director for Policy and Legislative Initiatives.

[FR Doc. E6–4412 Filed 3–27–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–07–1320–241A; KYES 50213]

Kentucky: Notice of Federal Competitive Coal Lease Sale, Kentucky

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale (KYES–50213).

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management–Eastern States (BLM–ES), will offer certain coal resources described below as the Blue Hole Federal Mineral Tract (KYES–50213) in Clay County, Kentucky, for competitive sale by sealed bid, in accordance with the provisions for competitive lease sales in 43 CFR part 3422, and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands of 1947.

DATES: The lease sale will be held at 10 a.m. on Thursday, May 11, 2006. The bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 4:30 p.m., May 10, 2006. The Cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that the envelope contains a bid for Coal Lease Sale KYES–50213, and is not to be opened before the date and hour of the sale.

ADDRESSES: The Lease sale will be held at BLM–ES, 7450 Boston Boulevard, Springfield, Virginia 22153. Sealed bids must be submitted to the Cashier, BLM–ES, at that address.

FOR FURTHER INFORMATION CONTACT: Contact Timothy Best, BLM–ES, 7450 Boston Boulevard, Springfield, Virginia 22153, telephone (703) 440–1527.

SUPPLEMENTARY INFORMATION: This Coal Lease Sale is being held in response to a lease by application (LBA) filed by Chas Coal LLC. The coal tracts to be offered are portions of 545b and 3094 Parcel 1 and Parcel 2 in the National Forest System, located on the upper end of the Left Fork of Blue Hole Creek in southern Clay County, Kentucky, on the Daniel Boone National Forest. The tracts encompass 314.53 acres and are delineated on a map in the Detailed Statement information. Both the surface and mineral estates are owned by the Federal government. The surface estate is managed by the U.S. Forest Service. The Blue Hole Federal Mineral Tract contains approximately 792,335 tons of recoverable coal which will be mined by underground methods in the Hazard #8 seam. The rank of the coal is High Volatile A Bituminous. The proximate analysis of the coal seam is as follows:

Hazard #8 seam estimated recoverable Federal coal.	792,335 tons.
Proximate Analysis (%):	
Moisture	2.1200%
Ash	5.0300%
Volatile	38.5800%
Fixed Carbon	54.2600%
Sulfur	0.8700%
Btu/lb	14,033

The Blue Hole Federal Mineral Tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid equals or exceeds the Fair Market Value (FMV) for the tract as determined by the authorized officer after the Sale. The Department of the Interior has established a minimum bid of $100 per acre or fraction thereof for the tracts. The minimum bid is not intended to represent the FMV. The lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre and a royalty of 8 percent of the value of the coal produced by underground mining

methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

The required Detailed Statement, including bidding instructions for the offered tracts and the terms and conditions of the proposed coal lease, is available from the BLM–ES at the address above. Case file documents for KYES 50213 are available for inspection during normal business hours only at the BLM–ES.

Dated: February 21, 2006.

Terry B. Lewis,

Acting State Director, Eastern States.

[FR Doc. E6–4415 Filed 3–27–06; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–PA]

Final Supplementary Rules for Public Lands in Park County, Colorado: Guffey Gorge/Guffey Gulch

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Royal Gorge Field Office is issuing supplementary rules to regulate conduct on specific public lands within Park County, Colorado. The rules apply to the public lands called Guffey Gorge, also known as Guffey Gulch. BLM has determined these rules necessary to protect the area's natural resources and to provide for public health and safe public recreation.

DATES: *Effective Date:* The rules are effective 30 days after the date of publication in the **Federal Register**.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Cañon City, Colorado 81212. You may contact us by e-mail at *ken_smith@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Field Manager, or Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, at the address listed above or by telephone at 719–269–8500. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Supplementary Rules
III. Procedural Matters

I. Background

Guffey Gorge/Guffey Gulch is a small tract (80 acres) of public land in Park County, Colorado. It is surrounded by private land with Park County Road 102 providing legal public access. Until five years ago, recreational use of this area was light, and the area was used primarily by local residents for picnicking, hiking, and swimming. Recreational use of the area has increased significantly over the past five years, resulting in resource damage, user conflicts, and safety hazards for visitors and surrounding private landowners.

II. Discussion of Supplementary Rules

These supplementary rules apply to approximately 80 acres of public lands known as Guffey Gorge, identified as follows:

Park County, Colorado, Sixth Principal Meridian

T. 15 S., R. 71 W.
Section 4: SE¼SE¼ Section 9: NE¼NE¼

These rules are needed to address significant public safety concerns and resource protection issues resulting from increased public use and unsafe user conduct on public lands known as Guffey Gorge. The authority for these supplementary rules is set forth at section 303 of the Federal Land Policy and Management Act, 43 U.S.C. 1740, and 43 CFR 8365.1–6. This notice, with a detailed map, will be posted at the Royal Gorge Field Office.

The proposed supplementary rules were published in the **Federal Register** on November 9, 2005 (70 FR 68080). We received seven letters of comment on the proposed supplementary rules. Each letter expressed support for the proposed supplementary rules. One letter expressed overall support for the rules but suggested allowing overnight camping on the forested uplands north of the gorge. We believe that this would confuse the public, direct the public into an area that is immediately adjacent to a large area of private land (leading to trespass), and unduly complicate enforcement of the day use only designation; therefore, we publish the rules unchanged as final supplementary rules.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely establish rules of conduct for public use of a limited area of public lands in order to protect natural resources and public health and safety.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that these supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules would merely establish rules of conduct for public use of a limited area of public lands in order to protect natural resources and public health and safety. Although some uses, such as camping, would be prohibited in the area, the area would still be open to other recreation uses. A detailed statement under NEPA is not required. BLM has placed the EA and Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules should have little effect on business, organizational, or governmental entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, human health, and safety. Therefore, BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). They would not result in an annual effect on the economy of $100 million or more, in a major increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, human health, and safety.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments, in the aggregate, or the private sector, of more than $100 million in any one year; nor do these supplementary rules have a significant or unique effect on small governments. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, human health, and safety. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1532.

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

The supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The reasonable restrictions that would be imposed by these supplementary rules would not deprive anyone of property or interfere with anyone's property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The shooting restrictions in the supplementary rules do not apply to hunting with a state hunting license. Therefore, in accordance with Executive Order 13132, BLM has determined that the supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these supplementary rules do not contain policies that have tribal implications. As such, no duties under Executive Order 13175 are required.

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

In accordance with Executive Order 13211, BLM has determined that the supplementary rules are not significant energy actions. The rules are not likely to have a significant adverse effect on energy supply, distribution, or use, including any shortfall in supply or price increase, and should have no substantial effect on fuel consumption.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Leah Quesenberry, Outdoor Recreation Planner, Royal Gorge Field Office, Bureau of Land Management.

Supplementary Rules for Guffey Gorge

The Royal Gorge Field Office, Colorado, issues these supplementary rules under the authority of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740, and 43 CFR 8365.1–6. Enforcement authority for these supplementary rules on the public lands within the Guffey Gorge area is found in FLPMA, 43 U.S.C. 1733, and 43 CFR 8360.0–7.

These supplementary rules apply to approximately 80 acres of public lands known as Guffey Gorge, identified as follows:

Park County, Colorado, Sixth Principal Meridian

T. 15 S., R. 71 W.
Section 4: SE¼SE¼ Section 9: NE¼NE¼

Rules

Guffey Gorge is designated as a day-use only area. You must observe the following supplementary rules when you are present there:

1. No person or persons shall enter or be upon these lands between the hours of sunset and sunrise.

2. No person or persons shall have any type of fire except in a mechanical stove or other appliance fueled by gas, and equipped with a valve that allows the operator to turn the flame on and off.

3. No person or persons shall bring or possess glass containers.

4. No person or persons shall possess or discharge any fireworks.

5. No person or persons shall discharge a firearm of any kind, including those used for target shooting or paintball. Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this rule.

6. All persons using these public lands shall keep the area free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment upon departure.

Penalties: Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and the Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3571, if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $100,000 or imprisoned for no more than 12 months, or both.

Sally Wisely,

State Director, Colorado State Office.

[FR Doc. 06–2939 Filed 3–27–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–210–1430–ET; NMNM 64057]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to extend the duration of Public Land Order (PLO) No. 6616 for an additional 20-year period. PLO No. 6616 withdrew 16.45 acres of public land in San Juan County, New Mexico from settlement, sale, location or entry under the general land laws, including the United States mining laws, to protect the Bureau of Land Management's Farmington Administrative Site.

DATES: Comments and requests for a public meeting must be received by June 26, 2006.

ADDRESSES: Comments and meeting requests should be sent to the BLM Farmington Assistant Field Manager for Resources, 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, BLM Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico 87401, 505–599–6332.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6616 (51 FR 25205) will expire on July 10, 2006, unless extended. The Bureau of Land Management has filed an application to extend PLO No. 6616 for an additional 20-year period. The withdrawal was made to protect the Farmington Administrative Site on public land described as follows:

New Mexico Principal Meridian

T. 29 N., R. 13 W.,
Sec. 7, lots 5, 11, and 12.

The area described contains 16.45 acres in San Juan County.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6616 for an additional 20-year term to protect the Federal investment in the Farmington Administrative Site.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the Federal investment in the Farmington Administrative Site.

There are no suitable alternative sites available since the Farmington Administrative Site is already constructed on the above-described public land.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Farmington Assistant Field Manager for Resources at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Farmington Field Office at the address noted above during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Farmington Assistant Field Manager for Resources within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. This withdrawal extension proposal will be processed in accordance with the applicable regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Dated: March 16, 2006.

Joel E. Farrell,

Assistant Field Manager for Resources, Farmington Field Office.

[FR Doc. E6–4413 Filed 3–27–06; 8:45 am]

BILLING CODE 4310–VB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1094 (Final)]

Metal Calendar Slides From Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

DATES: Effective Date: March 22, 2006.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), 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: On February 1, 2006, the Commission established a schedule for the conduct of the final phase of the subject investigation (71 FR 7574, February 13, 2006). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from April 17, 2006 to June 16, 2006 (71 FR 13091, March 14, 2006). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than June 12, 2006; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 14, 2006; the prehearing staff report will be placed in the nonpublic record on June 5, 2006; the deadline for filing prehearing briefs is June 13, 2006; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 22, 2006; the deadline for filing posthearing briefs is June 29, 2006; the Commission will make its final release of information on July 13, 2006; and final party comments are due on July 17, 2006.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 23, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–4474 Filed 3–27–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–020]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 4, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–318 and 731–TA–538 and 561 (Second Review) (Sulfanilic Acid from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 21, 2006.) See INV–DD–026 and GC–DD–035.
5. Outstanding action jackets:

1. Document No. ER–06–001: Approval of revised ''Summary of Statutory Provisions Related to Import Relief.''

2. Document No. GC–06–020: Final disposition of investigation in Inv. No. 337–TA–519 (Certain Personal Computers, Monitors, and Components Thereof).

3. Document No. GC–06–021: Whether to review an enforcement initial determination (''EID'') and initial advisory opinion (''IAO''); and disposition of complainant's motion to clarify the existing cease and desist order and to require the posting of a bond in Inv. No. 337–TA–503 (Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks, and Components Thereof).

4. Document No. GC–06–034: Whether to grant joint motions to terminate the investigation as to all respondents on the basis of settlement agreements; whether to vacate the presiding administrative law judge's final initial determination; and whether to grant a petition for reconsideration in Inv. No. 337–TA–523 (Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices II).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 23, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–3052 Filed 3–24–06; 3:25 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commisson

Notice of Meeting; Sunshine Act

PUBLIC ANNOUNCEMENT: Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11:30 a.m., Thursday, March 30, 2006.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed meeting.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

Petitions for reconsideration involving two original jurisdiction cases pursuant to 28 CFR 2.27.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: March 23, 2006.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 06–3020 Filed 3–24–06; 12:23 pm]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Notice of Meeting; Sunshine Act

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Thursday, March 30, 2006.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal Office, Case Operations Section, Case Services Section, and Executive Office.
3. Discussion of Reprimand Sanction Hearings.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: March 23, 2006.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 06–3021 Filed 3–24–06; 12:23 pm]

BILLING CODE 4410–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–021)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Privacy Act system of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish a description of a systems of records it maintains containing personal information when that system is substantially revised, deleted, or created. This notice provides notification that NASA has established a Freedom of Information Act (FOIA) tracking system. This system is designed to maintain records on individuals who make a FOIA request to NASA. This new system will enable NASA Center FOIA offices to track the progress of the FOIA request until the action is closed. Information being collected and maintained will assist the FOIA offices with tracking the FOIA request and ensuring proper processing under the FOIA multi-tracked ''first in—first out'' processing system.

DATES: The effective date of this notice is 30 days after publication. Comments must be received in writing on or before 30 days after publication.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F. Stockman, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

NASA 10FOIA

SYSTEM NAME:

NASA Freedom of Information Act System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting NASA records under the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include a summary of NASA documentation requested under each FOIA request, as well as personal information about the individual requesters including names, home addresses, home telephone numbers, and email addresses. Personal information is being collected and maintained from requesters in order to ensure that the NASA FOIA Offices will be able to properly respond to their FOIA request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C 552; 14 CFR part 1206.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in these records may be used to:

(1) Provide information to NASA support contractors who are responsible for the tracking of individual FOIA requests under the Freedom of Information Act; (2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on a NASA secure server as electronic records.

RETRIEVABILITY:

Records may be searched by name of requester, business name or address of requester.

SAFEGUARDS:

Approved security plans for these systems have been established in accordance with OMB Circular A–130, Management of Federal Information Resources. Individuals will have access to the system only in accordance with approved authentication methods. Only key authorized employees with appropriately configured system roles can access the systems and only from workstations within the NASA's Intranet.

RETENTION AND DISPOSAL:

Records are retained in computer databases and managed, retained and dispositioned in accordance with the guidelines defined in the NASA Procedure & Guidelines (NPG) 1441.1D, NASA Records Retention Schedules (NRRS), Schedule 1, Item 49.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager: Principal Agency FOIA Officer, Office of Public Affairs, Location 1, as set forth in Appendix A.

Subsystem Managers: Center FOIA Officers, located within locations 2–11, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the system manager or subsystem manager at the appropriate NASA Center, as set forth in Appendix A.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the system manager or subsystem manager at the appropriate NASA Center, as set forth in Appendix A.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records, procedures for contesting the contents and for appealing initial determinations are set forth in Title14, Code of Federal Regulations, Part 1212.

RECORD SOURCE CATEGORIES:

Information is collected directly from individuals making Freedom of Information Act requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 22, 2006.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E6–4488 Filed 3–27–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Notice of Issuance of Amendment to Materials License SNM–2509; Portland General Electric Company; Trojan Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of license amendment.

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) 415–8500; Fax number: (301) 415–8555; E-mail: *jsc1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment No. 6 to Special Nuclear Materials License SNM–2509 held by Portland General Electric Company (PGE) for the receipt, possession, transfer, and storage of spent fuel at the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

By application dated May 23, 2005, PGE requested to amend the Trojan ISFSI license (SNM–2509) to revise the methodology applied in the Final Safety Analysis Report. The application requested NRC's review and approval of revised methodology used to determine the controlled area boundary for the Trojan ISFSI and reduce the controlled area from 300 meters from the edge of the pad to 200 meters from the edge of the pad. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the

publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified. Also in connection with this action, the Commission performed an Environmental Assessment and determined that a Finding of No Significant Impact was appropriate for this action.

Further Information: The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusion. 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, and the SER are publically 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 on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers, located at the NRC Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of March 2006.

For the Nuclear Regulatory Commission.

Jill S. Caverly,

Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–4445 Filed 3–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 27, April 3, 10, 17, 24, May 1, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 27, 2006

There are no meetings scheduled for the Week of March 27, 2006.

Week of April 3, 2006—Tentative

Monday, April 3, 2006

3:55 p.m.—Affirmation Session (Public Meeting) (Tentative).

a. USEC, Inc. (American Centrifuge Plant); Geoffrey Sea appeal of LBP–05–28 (Tentative).

b. USEC, Inc. (American Centrifuge Plan)—Appeal of LBP–05–28 by Portsmouth/Piketon Residents for Environmental Safety and Security (PRESS) (Tentative).

c. Hydro Resources, Inc.—Petition for Review of Partial Initial Decision on Phase II Cultural Resource Challengers (Tentative).

Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

Week of April 17, 2006—Tentative

There are no meetings scheduled for the Week of April 17, 2006.

Week of April 24, 2006—Tentative

There are no meetings scheduled for the Week of April 24, 2006.

Monday, April 24, 2006

2 p.m.—Meeting with Federal Energy Regulatory Commission (FERC), FERC Headquarters, 888 First St., NE., Washington, DC 20426, Room 2C (Public Meeting).

Wednesday, April 26, 2006

1 p.m.—Discussion of Management Issues (closed—ex. 2).

Thursday, April 27, 2006

1:30 p.m.—Meeting with Department of Energy (DOE) on New Reactor Issues (Public Meeting).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Week of May 1, 2006—Tentative

Tuesday, May 2, 2006

9:30 a.m.—Briefing on Status of Emergency Planning Activities—Morning Session (Public Meeting) (Contact: Eric Leeds, 301–415–2334).

1 p.m.—Briefing on Status of Emergency Planning Activities—Afternoon Session (Public Meeting).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Wednesday, May 3, 2006

9 a.m.—Briefing on Status of Risk-Informed, Performance-Based Regulation (Public Meeting) (Contact: Eileen McKenna, 301–415–2189).

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 23, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–3031 Filed 3–24–06; 1:15 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the

Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 3, 2006 to March 16, 2006. The last biweekly notice was published on March 14, 2006 (71 FR 13169).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: December 1, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.4.1, ''Secondary Containment.'' Specifically, the change would modify Surveillance Requirements (SRs) 3.6.4.1.4 and 3.6.4.1.5 to clarify their intent with respect to secondary containment boundary integrity. The change is submitted in accordance with the TS Task Force Traveler 322–A, Revision 2, ''Secondary Containment and Shield Building Boundary Integrity SRs.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This change involves an administrative clarification to reflect the original intent of the Technical Specifications. There is no impact on the availability or capability of the secondary containment or Standby Gas Treatment (SGT) system as a result of the proposed change. Both the secondary containment and SGT system are considered accident-mitigating equipment and are not initiators of any previously evaluated accidents. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated. Additionally, the proposed change does not alter the secondary containment or SGT systems' performance measures or their ability to perform their accident mitigation functions.

Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes to the wording of TS SRs 3.6.4.1.4 and 3.6.4.1.5 clarify that only one SGT subsystem is required to ensure the requirements of TS 3.6.4.1 are met. The proposed change does not alter the parameters within which the plant is operated. There are no new system operating conditions or performance measures introduced by this proposed change that will affect the secondary containment and SGT systems' protective or mitigative functions. The proposed changes will not alter the methods in which equipment is operated or tested. No new accident scenarios or assumptions, failure mechanisms, or limiting single failures are introduced as a result of the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed change does not impact any of these margins of safety parameters. This change involves an administrative clarification to reflect the original intent of the TS. There is no adverse effect on the operability or design requirements of the secondary containment or SGT system. The equipment will continue to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety function. There is no impact on the plant safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Daniel S. Collins.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: February 27, 2006.

Description of amendments request: The amendment would revise Technical Specification 4.2.1, ''Fuel Assemblies,'' to allow fuel with advanced cladding material to be installed in the core for Cycle 19 only at Unit No. 1 or Cycle 17 only at Unit No. 2. Advanced cladding material from Framatome-ANP may be used in up to 2 lead test assemblies, and advanced cladding material from Westinghouse may be used in up to 2 lead test assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calvert Cliffs Technical Specification 4.2.1, Fuel Assemblies, states that fuel rods are clad with either Zircaloy or ZIRLO™. Calvert Cliffs Nuclear Power Plant, Inc. proposes to re-insert up to four fuel assemblies into Calvert Cliffs Unit 1 or Unit 2 that have some fuel rods clad in zirconium alloys that do not meet the definition of Zircaloy or ZIRLO™. A temporary exemption to the regulations has also been requested to allow these fuel assemblies to be re-inserted into Unit 1 or Unit 2. The proposed change to the Calvert Cliffs Technical Specifications will allow the use of cladding materials that are not Zircaloy or ZIRLO™ for one fuel cycle once the temporary exemption is approved. The proposed change to the Technical Specification is effective only as long as the temporary exemption is effective. The addition of what will be an approved temporary exemption for Unit 1 or Unit 2 to Technical Specification 4.2.1 does not change the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with existing equipment, change the equipment's function, or change the method of operating the equipment. The proposed change does not affect normal plant operations or configuration. Since the proposed change does not change the design, configuration, or operation, it could not become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The proposed change will add an approved temporary exemption to the Calvert Cliffs Technical Specifications allowing the installation of up to four lead fuel assemblies. The assemblies use advanced cladding materials that are not specifically permitted by existing regulations or Calvert Cliffs' Technical Specifications. A temporary exemption to allow the installation of these assemblies has been requested. The addition of an approved temporary exemption to Technical Specification 4.2.1 is an administrative change to allow the installation of the lead fuel assemblies under the provisions of the temporary exemption. The license amendment is effective only as long as the exemption is effective. This amendment does not change the margin of safety since it only adds a reference to an approved, temporary exemption to the Technical Specifications.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Richard J. Laufer.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: January 5, 2005, supplemented November 21, 2005.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 5.5.19.b, TS 5.5.19.c, and TS Surveillance Requirement (SR) 3.8.1.9. TS 5.5.19.b currently requires verification that a Lee Combustion Turbine (LCT) can supply the equivalent of one Unit's maximum safeguard loads, plus two Units' Mode 3 loads, when connected to the system grid every 12 months. In the proposed amendments, this requirement would be more clearly specified as, ''Verify an LCT can supply equivalent of one Unit's Loss of Coolant Accident (LOCA) loads plus two Unit's Loss of Offsite Power (LOOP) loads when connected to system grid every 12 months.'' TS 5.5.19.b and SR 3.8.1.9 would be revised for consistency.

This notice supersedes the notice published in the **Federal Register** on February 15, 2005 (70 FR 7764).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Duke proposes to revise TS 5.5.19.b to clarify the Lee Combustion Turbine (LCT) testing requirements. Duke proposes to revise TS 5.5.19.c and TS 3.8.1 Surveillance Requirement (SR) 3.8.1.19 to be consistent with the proposed change to TS 5.5.19.b. The proposed change makes the wording of the test requirement consistent with the UFSAR [Updated Final Safety Analysis Report]. LCT testing has no impact on the probability of an accident analyzed in the UFSAR. The LCT can be credited to mitigate the consequences of an accident analyzed in the UFSAR. However, this clarification of LCT testing requirements has no impact on its ability to mitigate the consequences of an accident. As such, the proposed LAR [license amendment request] does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Duke proposes to revise TS 5.5.19.b to clarify the Lee Combustion Turbine (LCT) testing requirements. Duke proposes to revise TS 5.5.19.c and TS 3.8.1 SR 3.8.1.9 to be consistent with the proposed change to TS 5.5.19.b. The proposed change makes the wording of the test requirement consistent with the UFSAR. These changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The proposed TS change does not unfavorably affect any plant safety limits, set points, or design parameters. The changes also do not unfavorably affect the fuel, fuel cladding, RCS [reactor coolant system], or containment integrity. Therefore, the proposed TS change, which clarifies TS requirements associated with the LCT testing program, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Branch Chief: Evangelos C. Marinos.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: March 13, 2006.

Description of amendment request: The proposed amendments would make changes to the technical specifications (TS) for LaSalle County Station (LSCS), Units 1 and 2. Surveillance Requirement (SR) 3.7.3.1 verifies the cooling water temperature supplied to the plant from the core standby cooling system (CSCS) pond (i.e., the ultimate heat sink (UHS)) is ≤ 100 °F. Currently, if the temperature of the cooling water supplied to the plant from the CSCS pond is > 100 °F, the UHS must be declared inoperable in accordance with TS 3.7.3. TS 3.7.3, Required Action B.1, requires that both units be placed in Mode 3 within 12 hours and Required Action B.2 requires that both units be placed in Mode 4 within 36 hours.

Prolonged hot weather in the area during the summer months, in conjunction with high humidity during the daytime, minimal cooling at night and little precipitation, has resulted in sustained elevated cooling water temperature supplied to the plant from the CSCS pond. This license amendment is being requested to increase the temperature limit of the cooling water supplied to the plant from the CSCS pond to ≤ 101.5 °F by reducing the temperature measurement uncertainty by replacing the existing thermocouples with higher precision temperature measuring equipment. Should the UHS indicated temperature exceed 101.5 °F, Required Action B.1 would be entered and both units would be placed in Mode 3 within 12 hours and Mode 4 within 36 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated? The proposed change will allow the indicated temperature of the cooling water supplied to the plant from the CSCS pond to be increased to ≤ 101.5 °F based on reducing the temperature measurement uncertainty by replacing the existing thermocouples with higher precision temperature measuring equipment.

Analyzed accidents are assumed to be initiated by the failure of plant structures, systems, or components. An inoperable UHS is not considered as an initiator of any analyzed events. As such, there is not a significant increase in the probability of a previously evaluated accident. Allowing the UHS to operate at a higher allowable indicated temperature, but still within the design limits of the equipment it supplies, will not affect the failure probability of that equipment. The current heat analyses calculations of record for LSCS, Units 1 and 2, assume a UHS temperature of 100 °F and post-accident peak inlet temperature of 104 °F. The proposed temperature increase is based solely on a reduction of the existing instrument loop uncertainty value. The current analysis bounds the proposed change. This higher allowable indicated temperature does not impact the LOCA [loss-of-coolant accident] Peak Clad Temperature Analysis, LOCA Containment Analysis or the non-LOCA analyses; therefore, continued operation with a UHS temperature > 100 °F but ≤ 101.5 °F will not increase the consequences of an accident previously evaluated in the UFSAR.

Based on the above information, the increase in the allowable indicated temperature of the cooling water supplied to the plant from the UHS to ≤ 101.5 °F by reducing the existing instrument loop uncertainty value has no effect on the result of the design basis event and will continue to allow each required heat exchanger to perform its safety function. The heat exchangers will continue to provide sufficient cooling for the heat loads during the most severe 30-day period.

Based on the above information, increasing the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond from ≤ 100 °F to ≤ 101.5 °F by reducing the instrument uncertainty value has no impact on any analyzed accident; therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed change involves replacing the presently installed thermocouples with higher accuracy temperature measurement equipment. This proposed action will not alter the manner in which equipment is operated, nor will the functional demands on credited equipment be changed. No alteration in the procedures that ensure the units remain within analyzed limits is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Raising the UHS temperature limit does not introduce any new or different modes of plant operation, nor does it affect the operational characteristics of any safety-related equipment or systems; as such, no new failure modes are being introduced. The proposed action reduces the instrument uncertainty value but does not alter assumptions made in the safety analysis.

Increasing the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond from ≤ 100 °F to ≤ 101.5 °F has no impact on safety related systems. The plant is designed such that the RHR [residual heat removal] pumps on the unit undergoing the LOCA/LOOP [loss of offsite power] conditions would start upon the receipt of a signal, and would load onto their respective Emergency Diesel Generators emergency bus during the LOOP event. The increase in the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond will not require operation of additional RHR pumps; therefore, system operation is unaffected by the proposed change in the UHS temperature limit.

Based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change allows an increase in the allowable indicated temperature of the cooling water supplied to the plant from the CSCS

pond to ≤ 101.5 °F. The margin of safety is determined by the design and qualification of the plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are initiated. The proposed action does not impact these factors as the analyzed peak inlet temperature of the UHS is unaffected based on the improved instrument uncertainty of the new high precision temperature measurement instrumentation. No setpoints are affected, and no other change is being proposed in the plant operational limits as a result of this change. All accident analysis assumptions and conditions will continue to be met. Adequate design margin is available to ensure that the required margin of safety is not significantly reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Daniel S. Collins.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: February 14, 2006.

Description of amendment request: The proposed amendment would revise the frequency of the Mode 5 Intermediate Range Monitoring (IRM) Instrumentation CHANNEL FUNCTIONAL TEST contained in Technical Specification (TS) 3.3.1.1 from 7 days to 31 days. The methodology used for the IRM drift analysis is based upon guidance contained in Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle,'' and Electric Power Institute Report TI–103335, ''Guidance for Instrument Calibration Extension/Reduction Programs.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specifications (TS) change involves an increase in the Mode 5 CHANNEL FUNCTIONAL TEST interval for RPS [Reactor Protection System] IRM channels from 7 days to 31 days. The IRM system is used for event mitigation. The failure of an IRM does not initiate an accident or transient event. The proposed TS change does not alter the design or function of the IRM system for no physical changes are being made to the plant. Evaluation of the proposed testing interval change demonstrated that the availability of IRMs to mitigate the consequences of a control rod withdrawal event at low power levels are not significantly affected based on the effectiveness of other, required TS surveillance testing that is performed, the availability of redundant systems and equipment, and the high reliability of the IRM equipment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change involves an increase in the Mode 5 IRM CHANNEL FUNCTIONAL TEST interval from 7 clays [days] to 31 days. Existing TS testing requirements ensure the operability of the IRMs. The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since no physical changes to the plant are being made. No new or different equipment is being installed, and no installed equipment is being operated in a different manner. As a result, no new failure modes are introduced. In addition, the manner in which surveillance tests are performed remains unchanged.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change involves an increase in the Mode 5 CHANNEL FUNCTIONAL TEST interval for RPS IRM channels from 7 days to 31 days. There is expected to be no impact on system operability, based upon the performance of the more frequent Channel Checks, Control Room monitoring when the IRMs are in use, and the overall IRM reliability.

Furthermore, a historical review of surveillance test results and associated maintenance records did not indicate evidence of any failure that would invalidate the above conclusions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Mindy S. Landau, Acting.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 16, 2005.

Description of amendment request: The proposed change to Technical Specification (TS) Surveillance Requirement (SR) 4.1.4d relocates the SR for testing the core spray header differential pressure (ΔP) instrumentation to licensee-controlled documents. TS SR 4.1.4d currently requires that the core spray header ΔP instrumentation be periodically tested such that a check of each sensor is performed at least once each day and each channel is calibrated and tested at least once every 3 months. The proposed change will allow these SRs to be placed in licensee-controlled documents where future changes will be made pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.59. The functional description of the core spray header ΔP instrumentation will also be relocated from the TS Bases to licensee-controlled documents consistent with the proposed TS change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are limited to the relocation of selected instrumentation requirements. The proposed relocated requirements were

determined not to meet the 10 CFR 50.36 screening criteria for retention in the TSs and will be maintained in licensee-controlled documents in accordance with the provisions of 10 CFR 50.59. The proposed changes do not introduce any new modes of plant operation, make any physical changes to the plant, or alter any operational setpoints which could degrade the performance of any safety system assumed to function in the accident analysis. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes do not introduce any new modes of plant operation, make any physical changes to the plant, or alter any operational setpoints which could create new accident initiators or failure mechanisms. The proposed changes are limited to the relocation of selected instrumentation requirements, and will have no impact on the accident assumptions and initial conditions as previously analyzed in the UFSAR [Updated Final Safety Analysis Report]. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed changes are consistent with the Improved Standard TSs (NUREG–1433, Rev. 3) and will have no impact on the instrumentation setpoints, logic, or functional requirements as described in the TSs, TS Bases, and UFSAR. The proposed relocated requirements were determined to not meet the 10 CFR 50.36 screening criteria for retention in the TSs. Thus, the relocated requirements will be maintained in accordance with 10 CFR 50.59 as required. Accordingly, the proposed relocated requirements will not degrade the quality or performance of any safety system assumed to mitigate an accident or assure operation within the safety limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: February 28, 2006.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 Technical Specification (TS) Surveillance Requirements (SRs) 3.8.4.7 and 3.8.4.8 to clarify that diesel generator ''E'' (DG E) electrical power subsystem testing does not require a mode restriction when the DG E diesel is not required to be OPERABLE.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. Performance of TS required SRs are not initiators to any accident sequences analyzed in the Final Safety Analysis Report (FSAR). The changes do not involve any physical change to structures, systems, or components, (SSCs) and do not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

Operation in accordance with the proposed Technical Specification (TS) ensures that the DC [direct current] distribution system and supported equipment functions remain capable of performing the function as described in the FSAR. Therefore, the mitigative functions supported by the system will continue to provide the protection assumed by the analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because performance of SRs on equipment not require[d] to be OPERABLE and isolated from the OPERABLE plant equipment cannot affect any margin of safety. Therefore, the plant response to analyzed events will continue to provide the margin of safety assumed by the analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Laufer

Southern California Edison Company (SCE), et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), San Diego County, California

Date of amendment requests: March 10, 2006.

Description of amendment requests: The licensee requests the Nuclear Regulatory Commission consent to the transfer of the City of Anaheim's 3.16 percent undivided ownership interest in SONGS 2 and 3 to Southern California Edison, excluding Anaheim's interest in its spent fuel and the SONGS 2 and 3 independent spent fuel storage installation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The amendments do not involve any change in the design, configuration, or operation of the nuclear plant. All Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications remain unchanged. SCE will continue to be the licensed operator of the units.

The technical qualifications of SCE to carry out its exclusive responsibilities under the operating licenses, as amended, will remain unchanged. Personnel engaged in operation, maintenance, engineering, assessment, training, and other related services are not changed. The SCE officers and executives currently responsible for the overall safe operation of the nuclear plants will continue in the same capacity.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The amendments do not involve any change in the design, configuration, or operation of the nuclear plant. The current plant design and design bases will remain the same. The current plant safety analyses, therefore, remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications are not affected by the change. As such, the plant conditions for which the design basis accident analyses were performed remain valid.

The amendments do not introduce a new mode of plant operation or new accident precursors, do not involve any physical alterations to plant configurations, or make changes to system set points that could initiate a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The amendments do not involve a change in the design, configuration, or operation of the nuclear plants. The change does not affect either the way in which the plant structures, systems, and components perform their safety function, or their design and licensing basis.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. Because there is no change to the physical design of the plant, there is no change to any of these margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 19, 2005.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Conditions for Operation (LCO) 3.3.1, ''Reactor Trip system (RTS) Instrumentation'' and TS Surveillance Requirements (SR) 3.2.4.2, ''Quadrant Power Tilt Ration (QPTR)'' to avoid confusion as to when a flux map for QPTR is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be release offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes do not result in a change in the manner in which the RTS and ESFAS provide plant protection. The RTS and ESFAS will continue to have the same set points after the proposed changes are implemented. There are no design changes associated with the license amendment.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also

maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Evangelos C. Marinos.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 10, 2006 (TS–453).

Description of amendment request: The proposed amendment would specify the methodology used for determining, setting, and evaluating as-found setpoints for those drift susceptible instruments, which are either necessary to ensure compliance with a Safety Limit or critical in ensuring the fuel peak cladding temperature acceptance criteria of 10 CFR 50.46 are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. Including references to TVA's methodology for determining, setting, and evaluating as-found instrument setpoints in the TS is an administrative change. There will be no change to the manner in which Safety Limits, Analytical Limits, or Allowable Values are determined. No changes are proposed in the manner in which the Reactor Protection System (RPS), Emergency Core Cooling System (ECCS), Reactor Core Isolation Cooling (RCIC), or Primary Containment Isolation systems provide plant protection or which create new modes of plant operation.

The proposed request will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. There are no hardware changes nor are there any changes in the method by which any plant system performs a safety function. This request does not affect the normal method of plant operation. The proposed amendment does not introduce new equipment, which could create a new or different kind of accident.

No new external threats, release pathways, or equipment failure modes are created. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this request. Therefore, the implementation of the proposed amendment will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. Including references to TVA's methodology for determining, setting, and evaluating as-found instrument setpoints in the TS is an administrative change. No changes are proposed in the manner in which the RPS, ECCS, RCIC, or Primary Containment Isolation systems satisfy the Updated Final Safety Analysis Report requirements for accident mitigation or unit safe shutdown. There will be no change to Safety Limits, Analytical Limits, Allowable Values, or post-Loss Of Coolant Accident peak clad temperatures. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Michael L. Marshall, Jr.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 6, 2006.

Description of amendment request: The proposed amendment would modify technical specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation 3.0.7. The changes are consistent with Nuclear Regulatory Commission approved Industry/Technical Specification Task Force (TSTF) standard TS change TSTF–373, Revision 4. The availability of this TS improvement was published in the **Federal Register** on May 4, 2005 (70 FR 23252), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. Entrance into Actions or delaying entrance into Actions is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on the delay time allowed before declaring a TS supported system inoperable and taking its Conditions and Required Actions are no different than the consequences of an accident under the same plant conditions while relying on the existing TS supported system Conditions and Required Actions. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind

of accident from any accident previously evaluated?

Response: No. The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change allows a delay time before declaring supported TS systems inoperable when the associated snubber(s) cannot perform its required safety function. The proposed change restores an allowance in the pre-ISTS conversion TS that was unintentionally eliminated by the conversion. The pre-ISTS TS were considered to provide an adequate margin of safety for plant operation, as does the post-ISTS conversion TS. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: February 15, 2006.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.'' The proposed amendment includes changes to the TS definition of Leakage, TS 3.4.6.2, ''Reactor Coolant System, Operational Leakage,'' TS 3.4.5, ''Steam Generator (SG) Tube Integrity,'' and adds TS 6.8.4.k, ''Steam Generator (SG) Program,'' and TS 6.9.1.16, ''Steam Generator Tube Inspection Report.'' The proposed changes are necessary in order to implement the guidance for the industry initiative on NEI 97–06, ''Steam Generator Program Guidelines.''

The amendment would also delete License Condition 2.C.8 Item b. This License Condition references the licensee's letters from 1997 that contain commitments associated with NRC Generic Letter 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking,'' and the application of voltage-based alternate repair criteria to the steam generators. The licensee has concluded that the provisions and requirements of the proposed TS changes bound the commitments identified in the existing License Condition.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated August 31, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as a main steamline break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated

design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Michael L. Marshall, Jr.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: December 15, 2005.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.'' The proposed amendment includes:

—Revised TS definition of Leakage,
—Revised TS 3.4.13, ''RCS [Reactor Coolant System] Operational Leakage,''
—Added new TS 3.4.17, ''Steam Generator Tube Integrity,''
—Revised TS 5.7.2.12, ''Steam Generator (SG) Tube Surveillance Program,'' and
—Revised TS 5.9.9, ''SG Tube Inspection Report.''

The proposed changes are necessary in order to implement the guidance for the industry initiative on NEI 97–06, ''Steam Generator Program Guidelines.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated December 15, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as a main steamline break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the

proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Michael L. Marshall, Jr.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 12, 2005.

Brief description of amendments: The amendments requested would revise Technical Specification (TS) 3.3.1, ''RTS [Reactor Trip System] Instrumentation,'' Surveillance Requirements (SRs) 3.3.1.2 and SR 3.3.1.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The Reactor Trip System (RTS) Instrumentation will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the Final Safety Analysis Report (FSAR) are not adversely affected because the change to the daily surveillance for the normalization of the Nuclear Instrumentation System (NIS) Power Range and Nitrogen-16 (N–16) Power Monitor indications assures the conservative response of the channel even at reduced power levels.

The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No performance requirements or response time limits will be affected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No. The proposed changes require a revision to the criteria for implementation of NIS Power Range and N–16 Power Monitor indication adjustments based on secondary power calorimetric calculations; however, the changes do not eliminate any RTS surveillances or alter the frequency of surveillances required by the TS. The revision to the criteria for implementation of the daily surveillance will remove a requirement for normalization of the NIS Power Range and N–16 Power Monitor indications at reduced power conditions that could result in safety performance outside the bounds of the safety analyses. Therefore, the Nominal Trip Setpoints and Allowable Values for the Reactor Trip System functions, as specified in the TS and related Bases, as well as the safety analysis limits assumed in the transient and accident analyses, are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety systems settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequences are unaffected by this proposed change.

The imposition of appropriate surveillance testing requirements will not reduce any margin of safety since the changes will assure that safety analysis assumptions on equipment operability are verified on a periodic frequency.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: David Terao.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: February 14, 2006.

Description of amendment request: Revise the Technical Specifications regarding the Containment Ventilation System to allow additional corrective actions for inoperable containment purge supply and exhaust valves.

Date of publication of individual notice in the ***Federal Register:*** March 1, 2006 (71 FR 10566).

Expiration date of individual notice: March 15, 2006.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission'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 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*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: June 20, 2005, as supplemented by letter dated November 2, 2005.

Brief description of amendment: This amendment revises the footnotes in Tables 3.4–2 and 4.4–3 of Technical Specification (TS) 3/4.4.7 by increasing the temperature limit above which (1) reactor coolant sampling and analysis for dissolved oxygen is required, and (2) when limit for dissolved oxygen, specified in TS 4.4.7, applies. This temperature limit will be increased from 180 °F to 250 °F.

Date of issuance: March 8, 2006.

Effective date: March 8, 2006.

Amendment No. 120.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 11, 2005 (70 FR 59084). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2006.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: September 1, 2005, as supplemented by letters dated December 22, 2005, and January 23, 2006.

Brief description of amendment: This amendment revises the technical specification (TS) requirements for pressurized-water reactor Boraflex fuel storage racks and adds TS requirements for fuel storage pool boron concentration. Specifically, the amendment (1) adds a new TS 3/4.7.14, ''Fuel Storage Pool Boron Concentration,'' with a Limiting Condition for Operation that requires a fuel pool boron concentration of at least 2000 ppm at all times, (2) revises and reformats TS 5.6.1 to specify the design features and fuel storage limitations in accordance with the categorization of spent fuel storage racks in various spent fuel pools, and (3) revises TS 5.3.1 to remove the cross-reference to TS 5.6.1.b.

Date of issuance: March 10, 2006.

Effective date: March 10, 2006.

Amendment No. 121.

Facility Operating License No. NPF–63: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** November 8, 2005 (70 FR 67745). The supplemental letters provided additional information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2006.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: February 25, 2005.

Brief description of amendments: The amendments made various administrative changes to the Technical Specifications (TSs).

Date of issuance: March 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 291 and 229.

Facility Operating License Nos. DPR–65 and NPF–49: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** March 29, 2005 (70 FR 15942).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 17, 2004.

Brief description of amendments: The amendments revised Appendix B, Environmental Protection Plan (non-radiological), of the LaSalle County Facility Operating Licenses.

Date of issuance: March 8, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 176/162.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Environmental Protection Plan.

Date of initial notice in ***Federal Register:*** April 12, 2005 (70 FR 19115).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 15, 2005.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.3.2.2, ''Feedwater System and Main Turbine High Water Level Trip Instrumentation,'' to reflect a design change in the instrumentation logic that trips the three feedwater pumps and main turbine.

Date of issuance: March 9, 2006.

Effective date: As of the date of issuance and shall be implemented prior to start-up from the spring 2006 refueling outage for Unit 2 and prior to start-up from the spring 2007 refueling outage for Unit 1.

Amendment Nos.: 330/225.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** August 30, 2005 (70 FR 51381).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2006.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al. (FENOC), Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: August, 20, 2004, as supplemented by letters dated June 16 and December 6, 2005.

Brief description of amendment: The amendment revised TS 3/4.8.1.1,''A.C. Sources—Operating,'' by deleting Surveillance Requirement (SR) 4.8.1.1.2.d.4, which requires verification that the emergency diesel generator auto-connected loads do not exceed the 2000-hour load limit. In addition, the amendment revised TS 4/3.8.1.2, ''A.C. Sources—Shutdown,'' to add exceptions to SR 4.8.1.2 when performed in Modes 5 and 6. As a result of discussions held on October 20, 2005, FENOC decided to withdraw the portion of the amendment request (LAR 01–0009) that requested clarification of SR 4.8.1.1.b.

Date of issuance: March 2, 2006

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 273.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 28, 2004 (69 FR 57989).

The June 16 and December 6, 2005, supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2006.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 2, 2005, as supplemented by letters

dated August 28, September 15, 2005, and January 12, 2006, and January 13, February 9, and February 28, 2006.

Brief description of amendment: This amendment revised the Technical Specifications (TSs) Section 2.1.1, ''Safety Limits—Reactor Core,'' and TS Section 2.2.1, ''Limiting Safety Settings—Reactor Protection System Setpoints.'' The amendment supports the use of the Framatome Mark B–HTP fuel design for Cycle 15, which is scheduled to begin following the refueling outage in March 2006.

Date of issuance: March 2, 2006

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 274.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29796).

The August 28, September 15, 2005, and January 12, January 13, February 9, and February 28, 2006, supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 25, 2005.

Brief description of amendment: The amendment revised the definitions of Channel Calibration, Channel Function Test, and Logic System Functional Test in accordance with the Technical Specification Task Force Traveler (TSTF)–205–A.

Date of issuance: March 10, 2006

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 217.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 11, 2005 (70 FR 59086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2006

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 11, 2005.

Brief description of amendment: The amendment deleted the surveillance requirement (SR) of TS 2.10.2(9)b(iii) to verify shutdown margin every 8-hour shift during low power physics testing. This change made TS 2.10.2(9)b more consistent with SR 3.1.7 of NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants, Revision 3.'' In addition, the Containment Structural Tests Report has been deleted from TS 5.9.3c and several administrative and editorial changes were made.

Date of issuance: February 1, 2006.

Effective date: February 1, 2006 and shall be implemented within 60 days from the date of issuance.

Amendment No.: 237.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 27, 2005 (70 FR 56503)

The Commission's related evaluation of the amendment is contained in a safety evaluation dated February 1, 2006.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: June 27, 2005, as supplemented on December 1, 2005, and February 28, 2006.

Brief description of amendments: These amendments change the SSES 1 and 2 technical specifications for reactor protection system and control rod block instrumentation, oscillation power range monitor instrumentation, recirculation loops operating, shutdown margin test—refueling, and the core operating limits report. The amendments modify the power range neutron monitor system (PRNMS) by installation of the General Electric Nuclear Measurement Analysis and Control PRNMS. The modification of the PRNMS replaces analog technology with a digital upgrade.

Date of issuance: March 3, 2006

Effective date: As of the date of issuance and to be implemented prior to startup following the Cycle 14 refueling outage for Unit 1 and the Cycle 13 refueling outage for Unit 2.

Amendment Nos.: 230 and 207.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 13, 2005 (70 FR 54088).

The supplements dated December 1, 2005, and February 28, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 2006.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2 (SSES 2), Luzerne County, Pennsylvania

Date of application for amendment: March 18, 2005, as supplemented on February 28, 2006.

Brief description of amendment: The amendment revises the SSES 2 Technical Specification 3.3.8.1, ''Loss of Power (LOP) Instrumentation,'' to (1) clarify that Condition A applies to the LOP instrumentation associated with both the Unit 1 and Unit 2 4.16 Kilovolt (kV) Engineered Safeguards System (ESS) buses since both the Unit 1 and Unit 2 buses are required to support Unit 2 operation, (2) add a new Condition B to allow the LOP instrumentation for two Unit 1 4.16kV ESS buses in the same division to be inoperable for up to 8 hours for the performance of Surveillance Requirement 3.8.1.19 on Unit 1. In addition, the amendment revises the SSES 2 TS 3.8.7, ''Distribution Systems—Operating,'' to (1) eliminate ''or more'' and the plural to ''subsystems'' such that the condition will read ''one Unit 1 AC [alternating current] electrical power distribution subsystem inoperable,'' and (2) add a new Condition D for two Unit 1 AC electrical power distribution subsystems inoperable.

Date of issuance: March 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 208.

Facility Operating License No. NPF–22: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29800).

The supplement dated February 28, 2006, provided additional information that clarified the application, did not expand the scope of the application as

originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 4, 2005.

Brief description of amendment: The amendment relocated the Transversing In-Core Probe (TIP) system Technical Specification (TS) to the Hope Creek Generating Station Updated Final Safety Analysis Report, as well as removed the note on the TIP system from the Reactor Protection System Instrumentation Surveillance Requirements table.

Date of issuance: March 8, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days from date of issuance.

Amendment No.: 164.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 15, 2005 (70 FR 12750).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2006.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: April 29, 2005, as supplemented on July 1 and November 21, 2005.

Brief description of amendment: The amendment revised Technical Specification 3.7.3, ''Main Feedwater Regulating Valves (MFRVs), Associated Bypass Valves, and Main Feedwater Pump Discharge Valves (MFPDVs),'' to allow the use of the main feedwater isolation valves in lieu of the MFPDVs to provide isolation capability to the steam generators in the event of a steam line break.

Date of issuance: March 16, 2006

Effective date: As of the date of issuance to be implemented prior to startup from the fall 2006 refueling outage.

Amendment No.: 95.

Renewed Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 7, 2005 (70 FR 33218).

The July 1 and November 21, 2005, letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the ***Federal Register***.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: August 31, 2005.

Brief description of amendment: The amendment revises the Technical Specifications associated with steam generator tube integrity consistent with Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

Date of issuance: February 23, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 306.

Facility Operating License No. DPR–77: Amendment revises the technical specifications.

Date of initial notice in ***Federal Register:*** November 22, 2005 (70 FR 70643).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 23, 2006.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket No. 50–446, Comanche Peak Steam Electric Station, Unit No. 2, Somervell County, Texas

Date of amendment request: April 27, 2005, as supplemented by letter dated July 20, 2005.

Description of amendment: The amendment revises the Technical Specifications to add Topical Report WCAP–13060–P–A to the list of NRC approved methodologies to be used at Comanche Peak Steam Electric Station, Unit 2.

Date of issuance: March 15, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 123.

Facility Operating License No. NPF–89: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 8, 2005 (70 FR 67753).

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 6, 2004, as supplemented by letters dated September 16 and November 22, 2005.

Brief description of amendments: The amendments revised the Technical Specification 3.8.1, ''AC Sources—Operating,'' to remove mode restrictions on surveillance requirements.

Date of issuance: March 15, 2006.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 124.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 15, 2005 (70 FR 12751).

The supplements dated September 16 and November 22, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 20th day of March 2006.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–2908 Filed 3–27–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership

and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between February 1, 2006, and February 28, 2006. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for February 2006.

Schedule B

No Schedule B appointments were approved for February 2006.

Schedule C

The following Schedule C appointments were approved during February 2006:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate). Effective February 28, 2006.

Office of National Drug Control Policy

QQGS00028 White House Liaison and Intergovernmental Affairs Specialist to the Chief of Staff. Effective February 2, 2006.

Office of the United States Trade Representative

TNGS60011 Confidential Assistant to the Chief of Staff. Effective February 22, 2006.

Office of Science and Technology Policy

TSGS60038 Confidential Assistant to the Associate Director, Science. Effective February 3, 2006.

Section 213.3304 Department of State

DSGS61032 Staff Assistant to the Director, Policy Planning Staff. Effective February 3, 2006.

DSGS61034 Staff Assistant to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs. Effective February 3, 2006.

DSGS61035 Staff Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs. Effective February 3, 2006.

DSGS61036 Staff Assistant to the Assistant Secretary for Public Affairs. Effective February 3, 2006.

DSGS61038 Special Assistant to the Chief of Protocol. Effective February 3, 2006.

DSGS61040 Staff Assistant to the Deputy Assistant Secretary, Bureau for Education and Cultural Affairs. Effective February 3, 2006.

DSGS61042 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs. Effective February 3, 2006.

DSGS61022 Special Assistant to the Deputy Assistant Secretary, Bureau of Overseas Building Operations. Effective February 7, 2006.

DSGS61043 Coordinator for Intergovernmental Affairs to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective February 7, 2006.

DSGS61045 Special Assistant to the Assistant Secretary for Democracy Human Rights and Labor. Effective February 10, 2006.

DSGS61046 Special Assistant to the Counselor. Effective February 10, 2006.

DSGS61047 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective February 10, 2006.

DSGS61048 Staff Assistant to the Counselor. Effective February 24, 2006.

Section 213.3305 Department of the Treasury

DYGS00442 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development). Effective February 17, 2006.

Section 213.3306 Department of Defense

DDGS16920 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective February 7, 2006.

DDGS16922 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 7, 2006.

DDGS16914 Personal and Confidential Assistant to the Deputy Secretary of Defense. Effective February 10, 2006.

DDGS16918 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective February 10, 2006.

DDGS16921 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs). Effective February 17, 2006.

Section 213.3310 Department of Justice

DJGS00202 Counsel to the Assistant Attorney General, Criminal Division. Effective February 2, 2006.

DJGS00262 Special Counsel for Voting Matters to the Assistant Attorney General. Effective February 10, 2006.

DJGS00278 Deputy Director to the Director, Office of Intergovernmental and Public Liaison. Effective February 10, 2006.

DJGS00185 Senior Counsel to the Deputy Attorney General. Effective February 14, 2006.

DJGS00061 Senior Advisor to the Assistant Attorney General. Effective February 15, 2006.

Section 213.3311 Department of Homeland Security

DMGS00478 Special Assistant to the Under Secretary for Science and Technology. Effective February 9, 2006.

DMGS00474 Director of Communications for Intelligence and Operations to the Deputy Assistant Secretary for Public Affairs. Effective February 10, 2006.

DMGS00479 Chief Technology and Process Manager to the Executive Secretary. Effective February 10, 2006.

DMGS00485 Policy Analyst to the Privacy Officer. Effective February 13, 2006.

DMGS00481 Director of Strategic Communications for Policy to the Director of Strategic Communications. Effective February 14, 2006.

DMGS00482 Director of Legislative Affairs for Intelligence and Operations to the Assistant Secretary for Legislative Affairs. Effective February 17, 2006.

DMGS00483 Press Secretary to the Director of Communications. Effective February 17, 2006.

DMGS00475 Coordinator for Local Affairs to the Director for Public Safety Coordination. Effective February 22, 2006.

DMGS00469 Special Assistant to the Under Secretary for Management. Effective February 24, 2006.

DMGS00487 Advisor to the Under Secretary for Preparedness. Effective February 24, 2006.

Section 213.3312 Department of the Interior

DIGS01058 Director, Take Pride In America to the Deputy Secretary of the Interior. Effective February 10, 2006.

DIGS79101 Special Assistant to the Director, National Park Service. Effective February 10, 2006.

Section 213.3313 Department of Agriculture

DAGS00842 Special Assistant to the Deputy Assistant Secretary for Administration. Effective February 3, 2006.

DAGS00839 Chief of Staff to the Administrator, Rural Housing Service. Effective February 6, 2006.

DAGS00844 Special Assistant to the Deputy Under Secretary, Research, Education and Economics. Effective February 10, 2006.

DAGS00843 Staff Assistant to the Chief Financial Officer. Effective February 16, 2006.

Section 213.3314 Department of Commerce

DCGS00669 Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective February 3, 2006.

DCGS60686 Director of Advance to the Chief of Staff. Effective February 3, 2006.

DCGS00311 Confidential Assistant to the Director, Office of White House Liaison. Effective February 7, 2006.

DCGS00673 Chief of Staff to the Assistant Secretary for Market Access and Compliance. Effective February 7, 2006.

DCGS00318 Special Assistant to the Associate Under Secretary for Economic Affairs. Effective February 14, 2006.

DCGS60004 Deputy Director to the Director, Executive Secretariat. Effective February 14, 2006.

DCGS00320 Confidential Assistant to the Secretary. Effective February 15, 2006.

DCGS00373 Confidential Assistant to the Senior Advisor. Effective February 15, 2006.

DCGS00555 Public Affairs Specialist to the Director of Public Affairs. Effective February 15, 2006.

DCGS00582 Confidential Assistant to the Assistant Secretary for Export Enforcement. Effective February 15, 2006.

DCGS00546 Special Assistant to the Deputy Secretary. Effective February 16, 2006.

Section 213.3315 Department of Labor

DLGS60118 Staff Assistant to the Director of Operations. Effective February 24, 2006.

DLGS60235 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 24, 2006.

DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training. Effective February 27, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60345 Director of Public Affairs to the Assistant Secretary for Children and Families. Effective February 2, 2006.

Section 213.3317 Department of Education

DBGS00508 Deputy Director, Office of English Language Acquisition to the Assistant Deputy Secretary and Director, Office of English Language Acquisition. Effective February 2, 2006.

DBGS00505 Deputy Secretary's Regional Representative, Region 6 to the Director, Regional Services. Effective February 3, 2006.

DBGS00507 Confidential Assistant to the General Counsel. Effective February 3, 2006.

Section 213.3318 Environmental Protection Agency

EPGS06001 Confidential Assistant to the Chief of Staff. Effective February 17, 2006.

EPGS06002 Program Manager (Operations) to the Deputy Chief of Staff (Operations). Effective February 17, 2006.

EPGS06003 Special Assistant to the Scheduler to the Deputy Chief of Staff (Operations). Effective February 17, 2006.

EPGS06004 Program Advisor (Media Relations) to the Deputy Chief of Staff (Operations). Effective February 17, 2006.

EPGS06005 Special Assistant to the Associate Administrator for Public Affairs. Effective February 22, 2006.

EPGS06006 Deputy Speech Writer to the Associate Administrator for Public Affairs. Effective February 23, 2006.

Section 213.3323 Federal Communications Commission

FCGS06040 Special Assistant to the Chairman. Effective February 15, 2006.

Section 213.3331 Department of Energy

DEGS00507 Intergovernmental and Tribal Affairs Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 3, 2006.

DEGS00512 Deputy Press Secretary to the Director, Public Affairs. Effective February 28, 2006.

Section 213.3331 Federal Energy Regulatory Commission

DRGS60006 Public Information Specialist to the Director, Public Affairs. Effective February 17, 2006.

Section 213.3332 Small Business Administration

SBGS60003 National Director for Native American Affairs to the Associate Deputy Administrator for Entrepreneurial Development. Effective February 7, 2006.

SBGS00555 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective February 23, 2006.

SBGS00594 Press Secretary to the Associate Administrator for Communications and Public Liaison. Effective February 23, 2006.

SBGS00595 Special Assistant to the Chief of Staff and Chief Operating Officer. Effective February 23, 2006.

SBGS00596 Special Assistant to the Associate Administrator for Field Operations. Effective February 23, 2006.

Section 213.3348 National Aeronautics and Space Administration

NNGS00165 Senior Press Specialist to the Assistant Administrator for Public Affairs. Effective February 16, 2006.

Section 213.3357 National Credit Union Administration

CUOT00025 Staff Assistant to the Member. Effective February 10, 2006.

Section 213.3360 Consumer Product Safety Commission

PSGS60050 Executive Assistant to the Chairman. Effective February 24, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60174 Congressional Relations Officer to the Deputy Assistant Secretary for Congressional Relations. Effective February 3, 2006.

DUGS60357 Staff Assistant to the Chief of Staff. Effective February 10, 2006.

DUGS60240 Speechwriter to the Assistant Secretary for Public Affairs. Effective February 14, 2006.

DUGS60168 Staff Assistant to the Chief of Staff. Effective February 17, 2006.

DUGS60421 Director, Office of Executive Scheduling and Operations to the Assistant Secretary for Administration/Chief Human Capital Officer. Effective February 23, 2006.

DUGS60211 Staff Assistant to the Director of Executive Scheduling. Effective February 24, 2006.

Section 213.33 National Endowment for the Humanities

NHGS60076 Director, We the People Program to the Deputy Chairman. Effective February 1, 2006.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218 Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. 06–2919 Filed 3–27–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S–P; OMB Control No. 3235–0537; SEC File No. 270–480.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Regulation S–P—Privacy of Consumer Financial Information

The Commission adopted Regulation S–P (17 CFR part 248) under the authority set forth in section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804), sections 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q, 78w), sections 31 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–30(a), 80a–37), and sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–11). Regulation S–P implements the requirements of Title V of the Gramm-Leach-Bliley Act (''Act''), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties (''privacy notice''). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option (''opt out notice''). The privacy notices required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S–P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers (''covered entities''). The Act and Regulation S–P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S–P. Therefore, few consumers are required to respond to opt out notices under the rule.

Compliance with Regulation S–P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S–P does not involve the collection of confidential information. Regulation S–P does not have a record retention requirement per se, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4.

Currently, there are approximately 20,434 covered entities (approximately 6,280 registered broker-dealers, 4,939 investment companies, and, out of a total of 10,210 registered investment advisers, 9,215 registered investment advisers that are not also registered broker-dealers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 11,219 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of $2,424 (32 hours of professional time at $70 per hour plus 8 hours of clerical or administrative time at $23 per hour) and each of the approximately 9,215 covered entities that is an investment adviser but not also a broker-dealer requires an estimated 5 hours at a cost of $303 (4 hours of professional time at $70 per hour plus 1 hour of clerical or administrative time at $23 per hour). Thus, the total compliance burden per year is 494,835 hours (40 hours for 11,219 broker-dealers and investment companies, and 5 hours for 9,215 investment advisers that are not also broker-dealers ($40 \times 11{,}219 = 448{,}760$, $5 \times 9{,}215 = 46{,}075$, and $448{,}760 + 46{,}075 = 494{,}835$), and $29,987,001 ($2{,}424 \times 11{,}219 = \$27{,}194{,}856$, $\$303 \times 9{,}215 = \$2{,}792{,}145$, and $\$27{,}194{,}856 + \$2{,}792{,}145 = \$29{,}987{,}001$).

The wage estimates of $70 per hour for professional time and $23 per hour for clerical or administrative time used in the foregoing calculations are based on estimated mean hourly wages of $68.23 for lawyers and $22.56 for all other legal support workers in the U.S. Department of Labor's Bureau of Labor Statistics' November 2004 National Industry-Specific Occupational Employment and Wage Estimate, NAICS 523100—Securities and Commodity Contracts Intermediation and Brokerage (available online, as of March 2, 2006, at *http://www.bls.gov/oes/current/naics4_523100.htm*) adjusted upward for inflation by 2.5% based on the percentage increase in the employment cost indexes for white collar workers and for administrative support, including clerical, workers from December 2004 to December 2005, as reported in the U.S. Department of Labor's Bureau of Labor Statistics' Employment Cost Index for wages and salaries for private industry workers by industry and occupational group (not seasonally adjusted) (available online, as of March 2, 2006, at *http://www.bls.gov/news.release/eci.t06.htm*).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 20, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–4431 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2500/803–187]

Adler Management, L.L.C.; Notice of Application

March 21, 2006.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANT: Adler Management, L.L.C. (''Applicant'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

SUMMARY OF APPLICATION: Applicant requests that the SEC issue an order declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

FILING DATES: The application was filed on July 25, 2005, and amended on January 31, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 13, 2006, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, Adler Management, L.L.C., c/o Luz Campa, 10350 Bren Road West, Minnetonka, Minnesota 55343.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Senior Counsel, or Jennifer Sawin, Assistant Director, at (202) 551–6787 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized in 1996 to serve exclusively as a ''family office'' for the members of the Rauenhorst family, its entities and charities. Applicant states this will continue to be the sole purpose for its existence. Applicant provides services to: (i) Gerald and Henrietta Rauenhorst, their lineal descendants (including by adoption) and spouses of their lineal descendants (the ''Rauenhorst Family''); (ii) entities that receive investment advisory services from Applicant that are beneficially and solely owned by (with one exception as provided herein) or solely for the benefit of various members of the Rauenhorst Family, and several entities that do not and will not receive investment advisory services from Applicant and each of which is majority-owned by members of the Rauenhorst Family and is also owned by employees or former employees of Applicant (''Rauenhorst Family Entities''); and (iii) charitable entities that were created by and are administered under the discretion of members of the Rauenhorst Family (''Rauenhorst Family Charities''). (Persons receiving services from Applicant are referred to herein as ''Clients''. Clients that receive investment advisory services from Applicant are referred to herein as ''Advisory Clients''.)

2. Applicant is owned exclusively by members of the Rauenhorst Family and its Board of Directors is composed exclusively of members of the Rauenhorst Family. Applicant's Board of Directors oversees all aspects of Applicant's operations.

3. Applicant represents that as a ''family office'', it provides a wide range of general management services to Clients, including budget preparation and management services; recordkeeping, bookkeeping and accounting services; federal and state tax return preparation services; real asset management services; insurance and risk management services; custodian and executor services; estate planning services; federal and state tax planning; coordination with accountants and attorneys; investment advisory services; and other administrative services.

4. Applicant represents that the fees it receives cover only its costs and are not intended to generate a profit.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in any phone book as an investment adviser or in any other directory as an investment adviser.

6. Applicant represents that it does not engage in advertising and that it will not solicit or accept as a client any person who is not a member of the Rauenhorst Family, a Rauenhorst Family Entity or a Rauenhorst Family Charity.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities * * *.'' Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC except as provided in section 203(b) and 203A. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act because it only has thirteen (13) clients. Applicant represents, however, that this exemption is operating as a constraint on its ability to provide advisory services to Clients, as children in the Rauenhorst Family cease to be minors and leave their childhood households. Applicant represents that it is not eligible for any other registration exemptions provided in section 203(b) and that it is not prohibited from registering with the SEC under section 203A(a) because Applicant has assets under management of not less than $25,000,000.

4. Applicant requests that the SEC issue an order pursuant to section 202(a)(11)(F) declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11).

5. Applicant states that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it was formed to be

the ''family office'' for the Rauenhorst Family. Applicant represents that all of its clients are members of the Rauenhorst Family, Rauenhorst Family Entities or Rauenhorst Family Charities. Applicant further asserts that the interests of the Applicant, its employees and its Clients are closely aligned because Applicant is owned exclusively and controlled by members of the Rauenhorst Family; Applicant's employees are fully accountable to Applicant's Board of Directors, which consists exclusively of members of the Rauenhorst Family; and the Clients are all either members of the Rauenhorst Family, Rauenhorst Family Entities and Charities. Applicant represents that only one person who is not a Rauenhorst Family member has any beneficial interest in a Rauenhorst Family Entity that is an Advisory Client of Applicant. This person is a long-standing loyal family employee, and he will not be permitted to increase his existing investment or to invest in other Rauenhorst Family Entities. Applicant states that apart from this isolated exception, it will prohibit persons that are not members of the Rauenhorst Family, Rauenhorst Family Charities or Rauenhorst Family Entities from investing in Rauenhorst Family Entities that are Applicant's Advisory Clients.[1]

For the SEC, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–4430 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 27, 2006:

A Closed Meeting will be held on Thursday, March 30, 2006 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 30, 2006 will be: Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; and Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–3010 Filed 3–24–06; 11:18 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53544; File No. SR–BSE–2005–46]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

March 23, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on October 24, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. On March 16, 2006, BSE filed Amendment No. 1 to the proposed rule change.[3] BSE filed Amendment No. 2 to the proposed rule change on March 21, 2006.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding delisting securities. The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

RULES OF THE BOSTON STOCK EXCHANGE

Chapter XXVII Listed Securities—Requirements

SEC. 1. No change.

SEC. 2.

(a) Voluntary Withdrawal from Listing

An issuer proposing to withdraw a security from listing shall provide to the Exchange a certified copy of a resolution of the board of directors of the issuer authorizing withdrawal from listing. Once the copy is provided to the Exchange, the issuer must comply with Exchange Act Rule 12d2–2(c). Specifically, the issuer must: 1) comply with all applicable laws in effect in the state in which the issuer is incorporated; 2) provide written notice, which describes the security involved and all material facts relating to the reasons for withdrawal, to the Exchange no fewer then 10 days before the issuer files an application on Form 25 with the Securities and Exchange Commission; 3) publish notice, contemporaneous with providing written notice to the Exchange, through a press release, and if it has a publicly accessible website by posting such notice on that website, which shall remain available until the delisting on Form 25 becomes effective. Upon receipt of such notice from the issuer, the Exchange, as required by Rule 12d2–2(c)(3), shall post notice of

[1] Applicant further states that Rauenhorst Family Entities that are only majority-owned by members of the Rauenhorst Family and are owned by employees or former employees of Applicant do not and will not receive investment advisory services from Applicant.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, BSE amended its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice. In addition, BSE revised its rule text to clarify which provisions in its appeal procedures were based on calendar or business days and to cross-reference its rules regarding the Exchange's basis for involuntary delisting of a class of securities by the Exchange.

[4] Amendment No. 2 replaced and superseded the Exchange's original Form 19b–4 in its entirety.

the issuer's intent on the Exchange website the next business day, and it shall maintain such posting until the delisting on Form 25 takes effect. The issuer must contemporaneously file a copy of Form 25 with the Exchange upon the submission of such form to the Securities and Exchange Commission. Once complete, the securities shall be removed from listing on the Exchange on the effective date established by Exchange Act Rule 12d2–2(d).

(b) Involuntary Withdrawal From Listing

Effective April 24, 2006, pursuant to Securities and Exchange Act Rule 12d2–2 for delisting and registration,[5] *where the Exchange is initiating the delisting from registration, for instances not provided in Rule 12d2–2(a), the Exchange may file an application to strike a class of securities from listing of such securities, where and issuer has fallen below the Exchange's continued listing policies and standards. (See Sec. 1) In such instances the Exchange shall:*

1. Provide notice to the issuer of its decision to delist its securities;

2. Provide an opportunity to appeal to the Stock List Committee as follows:

Appeal Procedure

A. A request to appeal the Exchange's decision to withdraw from listing shall be filed no later than five (5) business days following issuer's receipt of the decision. The request must include a five thousand dollar ($5,000) appeal fee. If the issuer does not request an appeal as specified, the Exchange shall submit to the Securities and Exchange Commission an application on Form 25 to strike the security from listing. A copy of Form 25 shall be provided to the issuer in accordance with Rule 12d2–2.

B. If a request to appeal is received by the Exchange, the issuer will be entitled to present a written appeal before the Stock List Committee. The issuer may request a hearing with its request to appeal. However, the decision to grant an appeal hearing lies in the sole discretion of the Stock List Committee. Regardless of whether a hearing, if requested, is granted, the issuer must submit to the Exchange any documents or other written materials the issuer wishes to be considered within fifteen (15) calendar days of the filing of the notice to appeal. No hearing shall be held without giving five (5) business days notice to the issuer of the time and place for the hearing.

C. The decision of the Stock List Committee shall be final. A written decision shall be served upon the issuer; and

3. If the decision is that the security is to be withdrawn from listing then, in accordance with Rule 12d2–2, no fewer than ten (10) days before such action becomes effective, an application on Form 25 shall be filed with the Securities and Exchange Commission. A copy of Form 25 shall be provided to the issuer. Public notice of the final determination to remove the security from listing shall be made by the Exchange by issuing a press release and posting notice on the Exchange Web site. This public notice will remain posted on the Web site until the delisting is effective.

*** * * Commentary**

An issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has received notice from the Exchange that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule12d2–2(c)(2)(ii) under the Exchange Act and; (ii) its public press release and web site notice required by Rule 12d2–2(c)(2)(iii) under the Exchange Act.

* * * * *

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

The purpose of the proposed rule change is to conform the rules of the Exchange to the procedures recently established by the Commission for removing from listing, and withdrawal from registration, securities under Section 12(b) of the Act.[6] As amended, Commission Rule 12d2–2 (the ''Rule'') requires each national securities exchange seeking to delist and/or deregister securities to file an electronic application on Form 25 with the Commission. In addition, the Rule requires that the rules of the Exchange provide (1) notice to the issuer; (2) an opportunity for appeal; and (3) public notice.

Specifically, Section 2(a) (Voluntary Withdrawal from Listing) revises and codifies the current practices of the Exchanges to conform to the Rule.[7] Section 2(a) provides that any issuer seeking to voluntarily delist a security from an exchange must comply with all of the requirements of the Rule. The Commentary to the Rule clarifies that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice.

Section 2(b) (Involuntary Withdrawal from Listing) provides the procedures when the withdrawal of a security from listing is initiated by the Exchange as outlined in the Rule. Section 2(b)(1) codifies the current practice of the Exchange to provide notice to the issuer of its decision to delist a security. New Section 2(b)(2) provides the issuer with an opportunity to appeal to the Stock List Committee. Sections 2(b)(2)(A)–(C) outline the issuers opportunity for a written appeal and hearing before the Stock List Committee. When an issuer files an appeal, a $5,000 appeals fee must accompany the request. New Section 2(b)(3) conforms the current practices of the Exchange to comply

[5] *The effective date of Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) amending Rule 12d2–2 is August 22, 2005. The compliance date is April 24, 2006. The BSE is incorporating the same compliance date into its rules.*

[6] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[7] While all of the rule text is new, the Exchange clarified which provisions of the rule text represented a codification of current Exchange practices. Telephone conversation between Maura Looney, Assistant Vice President, BSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission (March 22, 2006).

with the Rule. Section 2(b)(3) provides that the Exchange will give public notice of its final determination to delist the security by issuing a press release and posting a notice on its Web site. The public notice will remain on the Web site of the Exchange until the delisting is effective.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change, as amended, 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2005–46 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–BSE–2005–46. 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–2005–46 and should be submitted on or before April 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. 06–2996 Filed 3–23–06; 4:31 pm]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53532; File No. SR–ISE–2005–56]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish Fees for Enhanced Sentiment Market Data

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2005, the International Securities Exchange, Inc. (''ISE'' 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 ISE. On March 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] 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 is proposing to amend its Schedule of Fees to establish fees for enhanced sentiment market data. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange and at the Exchange's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*).

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change as amended and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the ISE added an unlimited queries subscription level, and explained in the purpose section of the proposed rule change the amount of the proposed fees, the impact of the Broker Marketing Alliance (described below) on the proposed fees, and the tier system adopted by the Exchange to facilitate the participation by all member firms for a bonus rebate.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE currently creates market data that consists of options quotes and orders that are generated by its members and all trades that are executed on the Exchange. The ISE also produces a Best Bid/Offer, or BBO, with the aggregate size from all outstanding quotes and orders at the top price level, or the ''top of the book.'' This data is formatted according to Options Price Reporting Authority (''OPRA'') specification and sent to OPRA for redistribution. OPRA processes the ISE's data along with the same data sets from the other five options exchanges and creates a National BBO, or ''NBBO,'' from all six options exchanges.

The ISE also creates data that is not disseminated by OPRA. One example of such data is the ISE Sentiment Index®, or ISEE®, a calculation that represents an overall view of market sentiment. The ISEE provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. Unlike the traditional put/call ratio, which makes no distinction between customer, market maker or firm transactions, the ISEE measures only opening long customer transactions on the ISE. The ISE updates the current ISEE value hourly during market hours and posts it for free on its Web site.[4] The ISEE is the basis for the enhanced sentiment market data, for which the Exchange is proposing to establish the fees in this proposed rule change.

The ISE believes the enhanced sentiment data offering will allow subscribers to identify bullish and bearish investor sentiment for nearly any issue traded on the Exchange using the same formula that is used for the ISEE calculation. Where the ISEE is a single value for the overall market sentiment, the enhanced sentiment data offering will provide more specific information that will allow an end user to retrieve a sentiment value for an individual symbol using a query tool, which is an intuitive Web browser interface. For example, an end user may be interested in the sentiment value for only the Nasdaq 100 Tracking Stock (symbol QQQQ). The user would just enter that symbol into the query tool interface to retrieve the sentiment value. In addition to the enhanced sentiment data query tool, there will also be a sentiment scanning tool that will comb the market for sentiment levels that meet pre-defined parameters. For example, an end user of a pre-defined query for the scanning tool would be able to determine which three stocks are most bullish in the oil sector based on sentiment values. The enhanced sentiment data will include sentiment values for particular indices, industry sectors or individual stocks and will be calculated three times per hour versus only one time per hour for the ISEE.

The enhanced sentiment data will be available to on-line investors on a subscription basis. The Exchange proposes four subscription levels: (i) 100 queries for $11.95 per month; (ii) 200 queries for $14.95 per month; (iii) unlimited queries for $19.95 per month; and (iv) unlimited pre-defined queries for $11.95 per month. This enhanced sentiment data will also be offered by some broker-dealers that participate in the ISE Broker Marketing Alliance program. A Broker Marketing Alliance is an arrangement between ISE and a participating U.S. broker-dealer who markets the enhanced sentiment offering to its customers. Clients of participating brokers will be able to take advantage of a discounted price for the same four subscription levels: (i) 100 queries for $9.95 per month; (ii) 200 queries for $11.95 per month; (iii) unlimited queries for $15.95 per month; and (iv) unlimited pre-defined queries for $9.95 per month.

Under a Broker Marketing Alliance, participating U.S. broker-dealers will participate in a revenue sharing arrangement with the Exchange for each of their referred customers that subscribes to the enhanced sentiment offering. Participating broker-dealers will receive a rebate of 35% of the subscription fee collected from subscribers. An additional bonus rebate will be paid to broker-dealers that achieve a subscription level based on the size of their firm and the number of clients that subscribe to the service. The Exchange believes that a tier system, as reflected in the Notes section of the proposed Schedule of Fees, is the most equitable method by which all member firms, regardless of their size, will be able to participate in the rebate program. Accordingly, the Exchange proposes a bonus rebate payable as follows: $500 per month for 500 subscribers at firms with 10,000–25,000 customers; $750 per month for 750 subscribers at firms with 25,001–100,000 customers; and $1,000 per month for 1,000 subscribers at firms with 100,001 or more customers. The Exchange believes that firms with a customer base of 10,000–25,000 accounts will be able to achieve 500 subscriptions with relatively the same ease as firms with a customer base of 25,001–100,000 accounts and 100,001 or more accounts, each of which are expected to achieve 750 and 1000 subscriptions, respectively, in order to qualify for the additional bonus rebate. The proposed additional bonus amounts paid to the brokers are all equal to 10.05% of the subscription revenue based on a subscription fee of $9.95 per month. For example, 500 subscribers at $9.95 is equal to $4,975 and the $500 bonus is equal to 10.05% of the $4,975; 750 subscribers at $9.95 is equal to $7,462.50 and the $750 bonus is equal to 10.05% of the $7,462.50; and 1,000 subscribers at $9.95 is equal to $9,950 and the $1,000 bonus is equal to 10.05% of the $9,950.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The ISE developed and conducted a comprehensive survey of a cross-section of participants in the financial services industry regarding their level of interest in a number of proprietary market data offerings and, based on the results of that survey, the Exchange developed a business plan to create and offer a number of proprietary market data products targeted to potential user groups, *e.g.*, individual investors, institutional investors, broker-dealers, etc. The Exchange also retained a consultant to validate the business plan and to provide advice on the structure and amount of fees to charge for these products. The ISE established a tiered pricing structure for enhanced sentiment data based on all of this information. The ISE believes that, under the tiered pricing structure, it is able to charge a lower fee to users who subscribe through the Broker Marketing Alliance because the Exchange will save on advertising costs associated with that user. Conversely, the Exchange believes it must charge a higher fee to users who subscribe directly on its Web site because it must incur advertising costs associated with that user. The Exchange believes the tiered levels and prices offered for the proposed market data offering provide investors with an ability to choose a plan that best suits their needs, from an annual subscription that is discounted, to a one-time subscription, regardless of whether an investor subscribes directly through the ISE's Web site or through a Broker

[4] *http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp.*

[5] 15 U.S.C. 78(f)(b)(4).

Marketing Alliance. Further, the Exchange believes the proposed rule filing provides market participants with an opportunity to obtain enhanced sentiment market data in furtherance of their investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2005–56 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–ISE–2005–56. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–56 and should be submitted by April 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4432 Filed 3–27–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53527; File No. SR–NASD–2006–035]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposed Amendments to IM–2110–2 to Codify NASD's Existing Position that the Manning Rule Applies to All Members, Whether Acting as a Market Maker or Not

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has asked the Commission to grant accelerated approval to the proposed rule change. The Commission is not granting accelerated approval to the proposed rule change at this time, but is considering doing so at the close of a 15-day comment period. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Interpretive Material (''IM'') 2110–2, Trading Ahead of Customer Limit Order (commonly referred to as the ''Manning Rule''), to codify NASD's existing position that the Manning Rule applies to all members, whether acting as a market maker or not. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

IM–2110–2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in Nasdaq and exchange-listed securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members [acting as market makers] to handle their customer limit orders with all due care so that *members*[market makers] do not ''trade ahead'' of those limit orders. Thus, members [acting as market makers] that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.[1]

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] 15 U.S.C. 78s(b)(1).

of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasdaq or exchange-listed security and that continues to trade the subject security for its own [market-making] account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member [acting as market maker] trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders [in their market-making capacity] even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

As outlined in NASD Notice to Members 97–57, the minimum amount of price improvement necessary in order for a *member*[market maker] to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:

- If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.
- If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a *member*[market maker] to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, *is* as follows:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the *member*[market maker] must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member['s market-making capacity] or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to [routinely] monitor *routinely* the handling of their customers' limit orders regarding the quality of the execution received.

(b) Exclusion for Limit Orders that are Marketable at Time of Receipt

NASD[The Association] has previously recognized the functional equivalency of marketable limit orders and market orders. Accordingly, it has adopted the following interpretation. IM–2110–2 shall not apply to a customer limit order if the limit order is marketable at the time it is received by a *member*[market maker]. These orders shall be treated as market orders for purposes of determining execution priority; however, these orders must continue to be executed at their limit price or better.

The exclusion for marketable customer limit orders from the general application of IM–2110–2 is limited solely to customer limit orders that are marketable when received by a *member*[market maker]. If a customer limit order is not marketable when received by a *member*[market maker], the limit order must be accorded the full protections of IM–2110–2. In addition, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable it must be accorded the full protections of IM–2110–2.

The following scenario illustrates the application of the exclusion. The market in XYZ stock is 25 bid—25 1/16 ask, the volume of trading in XYZ stock is extremely active, and Market Maker A (''MMA'') has a queue of market orders to buy and sell. Assume the following order receipt scenario. Each sell market order in the queue is for 1,000 shares and there are no special conditions attached to the orders. MMA then receives a customer limit order to sell 1,000 shares at 25. The customer limit order is marketable at the time it is received by MMA. MMA hits another market maker's bid at 25 for 1,000 shares. Normally, IM–2110–2 would require that the customer limit order be executed before the market orders in the queue. However, because the marketable limit order and the market orders should be treated as functionally equivalent in determining execution priority, the marketable customer limit order shall not be given execution priority over the market orders that were already in the queue. When the limit order is executed, however, it must be executed at the limit price or better.

In addition, if in the scenario just described the limit order does not get executed and the inside market in XYZ becomes 24 7/16 bid, the *member*[market maker] would have to protect the limit order as required by IM 2110–2 if the

member[market maker] trades at the limit order price or better.

(c) Exemption for the Facilitation on a Riskless Principal Basis of Other Customer Orders

A member shall be exempt from the obligation to execute a customer limit order in a manner consistent with this interpretation if such member engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the ''facilitated order''), provided that all of the following requirements are satisfied:

(1) through (3) No change.

(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD [Regulation] to accurately and readily reconstruct, in a time-sequenced manner, all orders *on* which a member relies in claiming this exemption.

[1] No change to text of footnote 1.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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

The Manning Rule generally prohibits a member from trading for its own account in a Nasdaq or exchange-listed security at a price that is equal or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.[3] The legal underpinnings for the Manning Rule are a member's basic fiduciary obligations and the requirement that it must, in the conduct of its business, ''observe high standards of commercial honor and just and equitable principles of trade.'' [4]

The Manning Rule is designed to ensure that customer limit orders are executed in a fair manner by prohibiting a member firm from trading ahead of customers' limit orders in its principal capacity without executing the customer limit order. Currently, IM–2110–2 generally provides that members acting as a market makers are prohibited from trading for their own accounts at prices equal or superior to an unexecuted customer's limit order in that security without executing the customer limit order. Further, if the member acting as a market maker trades ahead of a customer limit order and receives a better price than the unexecuted customer limit order, the member acting as a market maker must fill the customer limit order at the price at which it traded for its own account or better. While the text of the Manning Rule is written specifically to cover trading by market makers in their market-making capacity, NASD's longstanding position has been that the Manning Rule applies to all members (whether they are trading in a market making capacity or not) based on a member's best execution obligations.

For example, in *Notices to Members* 94–58 (July 15, 1994) and 95–43 (June 5, 1995), NASD provided guidance to member firms on the application of the Manning Rule to members not acting in a market making capacity. In the context of questions about whether a non-market maker holding a customer order can trade ahead of that limit order, NASD staff stated that it would be inconsistent with a member's best execution obligation for members to trade ahead of a customer's limit order even when not acting as a market maker.

In addition, the Manning Rule specifically states that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution and emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

Accordingly, NASD is proposing to amend the Manning Rule to codify NASD's existing position and to state explicitly that all members are prohibited from trading for their own accounts at prices that would satisfy a customer's limit order, whether acting as a market maker or not. NASD believes that the proposed amendments will provide better clarity to members as to the application of the Manning Rule to trading by non-market makers.[5]

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, ''the Association,'' ''the NASD'' or ''NASD Regulation, Inc.'' Instead, NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces references to ''Association'' and ''NASD Regulation'' in the text of the proposed rule change with ''NASD.''

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve treatment of customer limit orders and clarify the application of the Manning Rule to non-market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[3] For example, if a member bought 100 shares at $10 when holding customer limit orders in the same security to buy at $10 equaling, in aggregate, 1000 shares, the member is required to fill 100 shares of the customer limit orders.

[4] *See* NASD Rule 2110. *See* also NASD Rule 2320(a) (the ''Best Execution Rule''). Note: NASD has proposed changes to the Best Execution Rule in SR–NASD–2004–026, which is currently pending at the SEC.

[5] It is important to note that the proposed clarification does not change the application of the Manning Rule to multiple trading desks within a member firm as described in *Notice to Members* 95–43 (June 5, 1995) and *Notice to Members* 03–74 (November 26, 2003).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–035 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–NASD–2006–035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–035 and should be submitted on or before April 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4434 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53531; File No. SR–NASD–2006–008]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change to Re-establish a Fee Pilot for National Quotation Data Service

March 21, 2006.

On January 24, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reinstate its pilot program, which reduced the monthly fee that non-professional users pay to receive National Quotation Data Service (''NQDS''), retroactively to September 1, 2005.[3] The proposed rule change was published for comment in the **Federal Register** on February 15, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with Section 15A of the Act[5] and the rules and regulations thereunder.[6] Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(5) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members. The pilot lowers the monthly fee for non-professionals to receive NQDS from $50 to $10 a month. The Commission notes that the NQDS feature provides a mechanism to allow access to market data that is relevant to investors when they make financial decisions and that it does not unfairly discriminate between customers, issuers, brokers or dealers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2006–008), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4436 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53528; File No. SR–NSCC–2005–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating To Buy-Ins in Its Continuous Net Settlement System

March 21, 2006.

I. Introduction

On December 1, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2005–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Since August 22, 2000, Nasdaq has operated a pilot to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. Nasdaq inadvertently let the pilot lapse on September 1, 2005, until January 24, 2006. This filing reinstates the pilot retroactively to September 1, 2005, thereby reflecting the fact that the pilot was in place at that time. *See* Securities Exchange Act Release Nos. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (notice of filing and order granting accelerated approval of NASD–00–47); 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); and 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004).

[4] *See* Securities Exchange Act Release No. 53254 (February 8, 2006), 70 FR 8027 (SR–NASD–2006–008).

[5] 15 U.S.C. 78*o*3.

[6] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

December 27, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of this filing is to modify NSCC's Rules with regard to CNS Buy-Ins in an effort to harmonize the buy-in rules of the industry and to assist NSCC members in reducing their exposure related to buy-ins. At the request of participants and after consultation with the Buy-In Subcommittee of the Securities Industry Association, NSCC is modifying its Rules to create a new buy-in retransmittal procedure that may be utilized by NSCC members receiving buy-in notices initiated outside of the CNS System.[3] Existing NSCC fees related to CNS Buy-Ins will remain unchanged.

Current Process for CNS Buy-Ins

Currently under NSCC's Rules (except with respect to securities subject to a voluntary corporate reorganization), a member having a long position at the end of any day (''Originator'') may submit to NSCC a Notice of Intention to Buy-In (''Buy-In Notice'') specifying the quantity of securities that it intends to buy-in (''Buy-In Position''). The Buy-In Position is given high priority for allocation from the CNS night cycle on N+1 through completion of the CNS day cycle at approximately 3 p.m. eastern standard time on N+2.[4]

If the Buy-In Position (or a portion thereof) remains unfilled after the evening allocation on N+1, NSCC issues CNS Retransmittal Notices on the following morning allocation (N+1) to a sufficient number of members with short positions. NSCC issues CNS Retransmittal Notices in an aggregate quantity at least equal to the Buy-In Position. In no case will the Buy-In liability of a member exceed the Buy-In Position or the total short position of the member. If several members have short positions with the same age, all such members are issued CNS Retransmittal Notices even if the total of their short position exceeds the Buy-In Position. If the Buy-In Position is not satisfied by 3 p.m. on N+2, the buy-in may be executed.

This current process will remain in effect. Buy-In Notices transmitted by a member which is the original submitter will be referred to as ''Original Buy-In Notices.''

Procedure for CNS Buy-In Retransmittals

At times, an NSCC member will be in receipt of a buy-in notice initiated outside of the CNS system while at the same time be failing to receive shares from CNS in the same security. Recognizing that such externally initiated buy-ins may expire before the time the expiration period that NSCC's Rules currently provide as the expiration for CNS buy-ins (*i.e.*, the current N+2 expiration), NSCC will utilize a new procedure to permit retransmittals of such buy-ins with an appropriately shortened execution time frame.

Accordingly, the new procedure provides that an NSCC member which has a long position in CNS at the end of any day (*i.e.*, a fail to receive) and which is in receipt of a buy-in notice for securities of the same CUSIP that was initiated outside of the CNS System may submit a ''Buy-In Retransmittal Notice'' to NSCC. If the Buy-In Position (or a portion thereof) that is the subject of the Buy-In Retransmittal Notice is not satisfied by 3 p.m. on N+1, the buy-in can be executed. The Buy-In Retransmittal Notice will identify the entity that initiated the buy-in against the member.

The differences between a Buy-In Retransmittal Notice and an Original Buy-In Notice are as follows:

- An Original Buy-In Notice refers to a Buy-In Notice transmitted by a member for which the member is the original submitter. A Buy-In Retransmittal Notice refers to a Buy-In Notice submitted by a member where the member has received a buy-in notice outside of the CNS system with respect to securities of the same CUSIP.
- The member submitting a Buy-In Retransmittal Notice receives an elevated priority for CNS allocations upon NSCC's receipt of the notice. The member submitting an Original Buy-In Notice continues to receive elevated priority on the morning of N+1.
- The member submitting a Buy-In Retransmittal Notice is provided with five additional fields to be used to identify the entity or entities that initiated the buy-in against the member. At least one such entity other than the member must be identified or NSCC will reject the Buy-In Retransmittal Notice.
- For Buy-In Retransmittal Notices, NSCC transmits CNS Retransmittal Notices to CNS short members upon receipt of the Buy-In Retransmittal Notice on N. The CNS Retransmittal Notice identifies both the submitting member and the entity or entities that initiated the buy-in against the member. For Original Buy-In Notices, NSCC continues to transmit CNS Retransmittal Notices to short members on the morning of N+1.
- A buy-in based on a Buy-In Retransmittal Notice may be executed on N+1 if the Buy-In Position (or a portion thereof) is not satisfied by 3 p.m. on N+1. The execution of a buy-in based on an Original Buy-In Notice continues to be at 3 p.m. on N+2.

Technical Correction

In addition to modifying NSCC's Rules and Procedures to reflect the above changes, NSCC is also making technical correction to Procedure X, ''Execution of Buy-Ins—CNS System.'' The procedure states that members that receive CNS Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of the buy-in and that those members with the oldest short positions after the evening cycle on N+2 will first be held liable for an executed buy-in. Procedure X will now reflect that it is the oldest short positions after the day cycle on N+2 that will first be held liable for an executed buy-in.

Implementation

NSCC plans to implement these changes on a pilot basis open to all members as soon as possible following the Commission's approval of the proposed rule filing. The pilot will be limited to buy-ins of CNS eligible NYSE listed securities. NSCC anticipates that the pilot phase will be completed within thirty calendar days of implementation at which time buy-ins of all other CNS eligible securities will be permitted under these proposed changes. At that time the pilot will cease. NSCC will notify its members by an Important Notice of the specific date on which the pilot will expire and the proposed buy-in procedures are available for use with all CNS eligible securities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that NSCC's proposed rule change is consistent with this requirement because the buy-in

[2] Securities Exchange Act Release No. 52976 (December 19, 2005), 70 FR 76485.

[3] The specific rules being amended are Rule 11, ''CNS System,'' and Procedures VII, ''CNS Accounting Operation,'' and X, ''Execution of CNS Buy-Ins.''

[4] The day the Buy-In Notice is submitted to NSCC is referred to as N with N+1 and N+2 referring to the succeeding days. Each CNS day begins in the evening and includes an evening allocation of securities and a daytime allocation of securities.

[5] 15 U.S.C. 78q–1(b)(3)(F).

retransmittal procedures are designed to harmonize NSCC's buy-in rules with the buy-in rules of other self-regulatory organizations. Harmonization of buy-in rules among self-regulatory organizations should increase the efficiency of the buy-in execution process and should help to promote the prompt and accurate settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2005–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4433 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53529; File No. SR–Phlx–2006–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Dividend Spread and Merger Spread Program

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to: (1) Amend its dividend spread strategy program to assess a $0.05 per contract side license fee on additional equity option products in connection with dividend spread strategies to recapture license fees associated with the trading of these products; and (2) extend for a period of six months its fee caps on equity option transaction and comparison charges on dividend spread transactions[5] and merger spread transactions,[6] and its $0.05 per contract side license fee imposed for dividend spread transactions. The current fee caps and $0.05 per contract side license fee are in effect as a pilot program that expired on March 1, 2006. The Exchange proposes to extend the pilot program for a six-month period until September 1, 2006. The Exchange also proposes to make a minor technical change to delete unnecessary text from its fee schedule and to correct a typographical error.

The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com,* at the Office of the Secretary at Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on merger spread strategy and dividend spread strategy transactions executed on the same trading day in the same options class. Specifically, Registered Options Traders' (ROTs) and specialists' equity option transaction and comparison charges are capped at $1,750 for transactions effected pursuant to a merger spread strategy or pursuant to a dividend spread strategy when the dividend is $0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than $0.25, the ROTs' and specialists' equity option transaction and comparison charges are capped at $1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.[7]

In addition, the Exchange assesses a license fee of $0.05 per contract side for dividend spread strategy transactions in options in connection with certain products that carry license fees.[8] The license fee of $0.05 per contract side: (i) Is not subject to the $1,750 or $1,000 caps described above; (ii) is assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions; and (iii) does not count towards reaching the $1,750 or $1,000 caps. The Exchange proposes to extend the pilot program for the current fee caps and $0.05 per contract side license fee for a six-month period until September 1, 2006.[9]

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For purposes of this proposal, a ''dividend spread'' transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

[6] For purposes of this proposal, the Exchange defines a ''merger spread'' transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

[7] Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread or merger spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread or merger spread strategy, the Exchange rebates $0.08 per contract side for ROT executions and $0.07 per contract side for specialist executions on the business day before the underlying stock's ex-date. (The ''ex-date'' is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.) *See* Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR–Phlx–2005–19).

[8] These products are listed on the Exchange's fee schedule under the section entitled ''$60,000 ''Firm Related'' Equity Option and Index Option Cap.''

[9] Telephone conversation between Leah Mesfin, Special Counsel, Commission, and Cynthia Hoekstra, Director, Phlx, on March 21, 2006.

The Exchange also proposes to recoup the license fees owed in connection with the trading of additional products. Specifically, in addition to the products already being charged a license fee under the Exchange's strategy fee pilot program, the Exchange proposes to assess the license fee of $0.05 per contract side for dividend spread strategy transactions in options on: (1) State Street Global Advisors', a division of State Street Bank and Trust Company (''SSGA''), streetTracks based on the Dow Jones & Co., Inc. (''Dow Jones'') Global Titans 50 IndexSM, (DGT); (2) SSGA's streetTracks based on the Dow Jones Wilshire 5000 IndexSM, (TMW); (3) BGI's iShares Dow Jones Select Dividend IndexSM, (DVY); (4) iShares Dow Jones U.S. Total Market IndexSM, (IYY); (5) iShares Dow Jones U.S. Basic Materials IndexSM, (IYM); (6) iShares Dow Jones U.S. Consumer Services Sector IndexSM, (IYC); (7) iShares Dow Jones U.S. Financial Sector IndexSM, (IYF); (8) iShares Dow Jones U.S. Financial Services Sector IndexSM, (IYG); (9) iShares Dow Jones U.S. Healthcare Sector IndexSM, (IYH); (10) iShares Dow Jones U.S. Industrial Sector IndexSM, (IYJ); (11) iShares Dow Jones U.S. Consumer Goods Sector IndexSM, (IYK); (12) iShares Dow Jones U.S. Real Estate Sector IndexSM, (IYR); (13) iShares Dow Jones U.S. Technology Sector IndexSM, (IYW); (14) iShares Dow Jones U.S. Telecommunications Sector IndexSM, (IYZ); (15) iShares Dow Jones U.S. Utilities Sector IndexSM, (IDU); and (16) First Trust's ETF based on the Dow Jones Select Microcap IndexSM, (FDM).[10]

Even with the assessment of the $0.05 license fee per contract side, the Exchange believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategy transactions. In addition, the purpose of extending the pilot program is to continue to attract additional liquidity to the Exchange and to remain competitive.

The reference to the $1,000 and $1,750 caps that are subject to a pilot program that expired on March 1, 2006 inadvertently appears twice on the fee schedule in the same paragraph. Therefore, the purpose of removing this sentence is to clarify and simplify the text relating to the caps and the pilot program as it appears on the Exchange's fee schedule. In addition, the purpose of changing one reference to the symbol ''IWM'' to ''IYM'' is to correct a typographical error. The symbol ''IYM'' is the symbol for iShares Dow Jones U.S. Basic Material IndexSM.[11]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[12] in general, and Section 6(b)(4),[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(2) of Rule 19b–4 thereunder[15] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–16 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–2006–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[10] The products listed in this proposal were recently the subject of a proposed rule change filed with the Commission to include them on the list of products that are assessed a license fee of $0.10 per contract side in connection with the Exchange's $60,000 ''Firm Related'' Equity Option and Index Option Cap. This same list of products is also used to designate the products that are assessed a license fee of $0.05 per contract side for dividend spread strategies in connection with transactions other than firm-related transactions. *See* Securities Exchange Act Release No. 53287 (February 14, 2006), 71 FR 9186 (February 22, 2006) (SR–Phlx–2006–10).

[11] ''Dow Jones'' and ''SSGA's streetTracks based on the Dow Jones Global Titans 50 IndexSM'', ''SSGA's streetTracks based on the Dow Jones Wilshire 5000 IndexSM'', ''BGI's iShares Dow Jones Select Dividend IndexSM'', ''iShares Dow Jones U.S. Total Market IndexSM'', ''iShares Dow Jones U.S. Basic Materials IndexSM'', ''iShares Dow Jones U.S. Consumer Services Sector IndexSM'', ''iShares Dow Jones U.S. Financial Sector IndexSM'', ''iShares Dow Jones U.S. Financial Services Sector IndexSM'', ''iShares Dow Jones U.S. Healthcare Sector IndexSM'', ''iShares Dow Jones U.S. Industrial Sector IndexSM'', ''iShares Dow Jones U.S. Consumer Goods Sector IndexSM'', ''iShares Dow Jones U.S. Real Estate Sector IndexSM'', ''iShares Dow Jones U.S. Technology Sector IndexSM'', ''iShares Dow Jones U.S. Telecommunications Sector IndexSM'', ''iShares Dow Jones U.S. Utilities Sector IndexSM'', and ''First Trust's ETF based on the Dow Jones Select Microcap IndexSM'', are service marks of Dow Jones & Company, Inc. and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc. The Dow Jones products are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product(s).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–16 and should be submitted on or before April 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4429 Filed 3–27–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of Florida, Miami, Division, dated August 30, 2005, the United States Small Business Administration hereby revokes the license of Capital International SBIC, L.P., a Delaware limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 04/04–0275 issued to Capital International SBIC, L.P. on December 4, 1998 and said license is hereby declared null and void as of November 30, 2003.

Dated: March 7, 2006.

United States Small Business Administration.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 06–3037 Filed 3–27–06; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Northern District of Georgia, Atlanta Division, dated September 22, 2003, the United States Small Business Administration hereby revokes the license of Fidelity Capital Corporation, a Georgia Corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/05–0028 issued on April 18, 1961 to Business Investor, Inc. which subsequently merged with Fidelity Capital Corporation and said license is hereby declared null and void as of December 23, 2003.

Dated: March 7, 2006.

United States Small Business Administration.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–4446 Filed 3–27–06; 8:45 am]

BILLING CODE 8025–01–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5353]

Paul Simon Water for the Poor Act 2005 Town Hall Meeting

The U.S. Department of State's Bureau of Oceans and International Environmental and Scientific Affairs would like to invite interested groups and individuals to a ''Paul Simon Water for the Poor Act 2005 Town Hall'' meeting to be held on April 19, 2006 from 1 p.m. to 3 p.m. in the Loy Henderson Auditorium of the Department of State's Harry S. Truman Building. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The Paul Simon Water for the Poor Act of 2005 (HR 1973/PL–109–121) requires that the Department of State with the U.S. Agency for International Development develop a strategy to further U.S. foreign assistance objectives to provide affordable and equitable access to safe water and sanitation in developing countries. The Act directs that the strategy be developed in consultation with ''other appropriate Federal departments and agencies, international organizations, international financial institutions, recipient governments, United States and international nongovernmental organizations, indigenous civil society and other appropriate entities.'' The purpose of the Town Hall meeting will be to solicit the individual views of attendees from these and any other interested groups, including their priorities and activities in the water sector; novel approaches to addressing water and sanitation issues in developing countries; impediments to accomplishing priority goals; and areas where the U.S. government could improve the environment for implementation.

In addition, interested parties are invited to submit their written comments to Ms. Aneri Patel, U.S. Department of State, OES/PCI Room 7821, 2201 C Street, NW., Washington, DC 20520 or by e-mail to *WPAct2005@state.gov* no later than April 30, 2006. Written comments should be limited to 1500 words. Groups wishing to present their observations orally at the meeting will be asked to limit their remarks to 3 minutes. Order of speakers will be on a first come, first served basis on the day of the Town Hall meeting.

Admittance to the Department of State building for all non-Department of State attendees will be granted by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, identification (*e.g.*, driver's license number, passport number), date of birth, and citizenship to Ms. Aneri Patel at *WPAct2005@state.gov* no later than 5 p.m. on April 12, 2006. All attendees for this meeting must use the 23rd Street entrance. One of the following forms of valid photo identification will be required for admittance: U.S. driver's license, passport, student identification card, or U.S. government identification card. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building and should plan to arrive at least 15 minutes before the meeting begins.

For further information, please contact Aneri Patel at: 1–866–501–7952 or by e-mail at *WPAct2005@state.gov.*

Claudia A. McMurray,

Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. E6–4472 Filed 3–27–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Information Collection Approval

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2005, [FR Vol. 70, No. 209, page 62368]. No comments were received.

DATES: Comments on this notice must be received by April 27, 2006: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Caffin Gordon, Chief, Compliance Operations Division, S–34, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9370 or (TTY) 202–366–0663.

SUPPLEMENTARY INFORMATION:

Titles: Individual Complaint of Employment Discrimination.

OMB Numbers: New Collection.

Affected Public: Job applicants filing EEO employment discrimination complaints. An applicant's filing of an EEO employment complaint is solely voluntary.

Annual Estimated Burden: 16 hours.

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 estimate 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 22, 2006.

Steven B. Lott,

Manager, IT Investment Management Office, Office of the Chief Information Officer, United States Department of Transportation.

[FR Doc. E6–4473 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, April 18, 2006 from 9 a.m. to 4:30 p.m., Wednesday, April 19, 2006, from 9 a.m. to 4:30 p.m., and Thursday, April 20, 2006, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, Conference Rooms 1A and 2A, 600 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kalinowski, Executive Director, ATPAC, System Operations Airspace and Aeronautical Information, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, April 18, 2006 from 9 a.m. to 4:30 p.m., Wednesday, April 19, 2006, from 9 a.m. to 4:30 p.m., and Thursday, April 20, 2006, from 9 a.m. to 12 p.m.

The agenda for this meeting will cover: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 11, 2006. The next quarterly meeting of the FAA ATPAC is planned to be held from July 11–13, 2006, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on March 20, 2006.

Nancy Kalinowski,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 06–2974 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for the South Florida East Coast Corridor Transit Analysis in Southeast Florida; Including Miami-Dade, Broward, Palm Beach Counties, FL

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement.

SUMMARY: The FTA and the Florida Department of Transportation (FDOT) are issuing this notice to advise the public that, in accordance with the National Environmental Policy Act (NEPA), Tier 1 of a Tiered, Programmatic Environmental Impact Statement (PEIS) will be prepared for the South Florida East Coast Corridor Transit Analysis (SFECCTA) to evaluate transit improvements in Miami-Dade, Broward and Palm Beach Counties, Florida. The SFECCTA is located along the eastern spine of the tri-county South Florida region, centered on but not limited to the Florida East Coast (FEC) Railway alignment. The study proposes in Tier 1 to evaluate preferred technologies (*e.g.*, rail, bus, express bus, etc.) and alignments through areas with heavily congested roadways and under-served, transit-dependent populations. These areas extend from Downtown Miami north through Ft. Lauderdale's Central Business District (CBD) and north of Downtown West Palm Beach to the Town of Jupiter and Village of Tequesta in northern Palm Beach County. The Tier 1 Analysis consists of a Regional Transit Alternatives Analysis. The Tier 2 Analyses will consist of subsequent Sectional Alternatives Analyses (per independent section of the SFECCTA study area).

DATES: *Scoping meetings:* A series of public scoping meetings will be held in North Miami, Miami-Dade County; Fort Lauderdale, Broward County; and, West Palm Beach, Palm Beach County, Florida between April 17th and April 24th, 2006. See **ADDRESSES** below. *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Scott P. Seeburger, Project Manager, Florida Department of Transportation by May 30th, 2006. See **ADDRESSES** below.

ADDRESSES: *Written comments* on the project scope should be sent to: Scott P. Seeburger, Project Manager, Florida Department of Transportation, District

IV Planning and Environmental Management, 3400 West Commercial Boulevard, Fort Lauderdale, FL 33309–3421, (954) 777–4632, *scott.seeburger@dot.state.fl.us.*

All scoping meetings will be held in wheelchair-accessible locations as follows:

Broward County: Monday, April 17th, 2006, from 3 to 9 p.m. at Broward County Main Library—6th Floor, 100 South Andrews Avenue—Fort Lauderdale, Florida.

Miami-Dade County: Wednesday, April 19th, 2006, from 3 to 9 p.m. at Gwen Margolis Community Center, 1590 N.E. 123rd Street—North Miami, Florida.

Palm Beach County: Monday, April 24th, 2006, from 3 to 9 p.m. at Cohen Pavilion at the Kravis Center, Lecture Hall A 701 West Okeechobee Boulevard—West Palm Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Tony Dittmeier, Transportation Program Specialist, Federal Transit Administration, Atlanta Federal Center, 61 Forsyth St., SW., Suite 17T50, Atlanta, Georgia 30303 Telephone: (404) 562–3512.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, in cooperation with FDOT and the Federal Railroad Administration (FRA), will establish the scope of the Tiered, PEIS for the SFECCTA in accordance with NEPA after consulting with Federal, State, and local resource and regulatory agencies through meetings and correspondence, and after hearing from the general public. Interested individuals, organizations, and agencies are invited to participate in defining the alternatives to be evaluated and related issues of concern with this study. An Advance Notification (AN) describing the proposed project study in detail with maps, figures and summary tables of socio-economic, social-cultural, environmental and other information was sent out by FDOT on January 23, 2006 and is also available on the project Web site at *http://www.sfeccstudy.com/documents.html* or by contacting Scott Seeburger, the FDOT Project Manager at the address, phone number, or email address given above under **ADDRESSES**. Also contact Mr. Seeburger to be placed on the project mailing list and receive information about the public scoping meetings and the project newsletter. Written comments on the alternatives and potential impacts to be considered should be sent to Scott Seeburger of FDOT.

II. Description of Study Area and Project Need

As described in detail in the FDOT AN mentioned above, the proposal is to improve transit services within a 2-mile wide, 85-mile long corridor (100 miles with connections to seaports and airports) along the eastern spine of development in southeast Florida within the contiguous urbanized portions of Miami-Dade, Broward and Palm Beach Counties, Florida. This 203 square mile (mi^2) study area is centered along, but not exclusively considering, the Florida East Coast (FEC) Railway from Downtown Miami (at the Miami-Dade Government Center) through the Central Business Districts (CBDs) of Downtown Aventura, Hollywood, Ft. Lauderdale, Boca Raton, Delray Beach, West Palm Beach, and Jupiter, Florida. Improvements to transit services in this tri-county, single Metropolitan Statistical Area (MSA) are considered necessary to provide for the existing and projected demands to move goods and people (*i.e.*, freight and transit).

Federal transit law requires that projects proposed for FTA funding come from a long range metropolitan transportation plan that is fiscally constrained and conforms to State air quality plans. The proposed project has been found consistent with the approved comprehensive Long Range Transportation Plans of the Miami-Dade, Broward, and Palm Beach County Metropolitan Planning Organizations (MPOs) and with the local gubernatorially-approved 2005 Miami-Dade, Broward, and Palm Beach County MPO Transportation Improvement Plans (TIPs). The project is also consistent with the Federally-approved conforming TIPs of each of the three MPOs. The study area is highly developed, experiencing rapid redevelopment/densification, and project need is demonstrated in that the capacity of transportation facilities and services throughout the eastern portion of the tri-county area is not adequate for the present movement of goods and people. Furthermore, demographics indicate a growing populace of transit dependent commuters that current capacity cannot properly service. Freight service also needs to be upgraded in order to meet future freight demands. The seaports have focused on the corridor along the FEC Railway for new intermodal and freight transportation capacity given that roadway expansion is limited. The safe and efficient movement of freight and people to and from the South Florida area is important to the overall economic and environmental health of the region.

III. Alternatives

Alternatives under consideration include (1) taking no action; (2) Transportation Systems Management (TSM)/Baseline Alternative (planned transportation improvements);

(3) Build Alignment Alternatives including:

- FEC railway corridor
- US 1/Federal Highway/Biscayne Boulevard
- Dixie Highway
- Other roadways

(4) Build Technology/Transit Services Alternatives including:

- Intercity Passenger Rail (IPR)
- Commuter Rail Transit (CRT), including Diesel Multiple Unit (DMU) or Diesel-Electric Multiple Units (DEMU)
- Heavy Rail Transit (HRT)
- Monorails
- Light Rail Transit (LRT), including Light Diesel Multiple Unit (LDMU) or Light Diesel-Electric Multiple Units (LDEMU)
- Automated Guideway Transit (AGT)
- Bus Rapid Transit (BRT)
- Express Bus
- Waterborne Transit

IV. Probable Effects/Potential Impacts for Analysis

FTA and FDOT will evaluate all environmental, social, and economic impacts of the alternatives analyzed in the SFECCTA. This study will be incorporated into and serve as a source of information for the federal and state resource as well as regulatory agencies participating in Florida's Efficient Transportation Decision Making (ETDM) Process. The ETDM process was recently developed in response to the environmental provisions contained in Section 1309 of the Transportation Equity Act for the 21st Century (TEA–21), called ''Environmental Streamlining.'' The SFECCTA will be conducted in full compliance with the National Environmental Policy Act (NEPA) of 1969 and other related Federal and State laws, rules, and regulations. The SFECCTA will also be developed in accordance with the environmental provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

The Tiered EIS will evaluate purpose and need for the project, including project status, capacity, system linkage, legislation, social demands or economic development, modal interrelationships, and safety. The impact areas to be addressed include land use (existing, future, transit supportive/future

patterns, and redevelopment potential); wetlands; floodplains; wildlife and habitat; specially designated waters (Outstanding Florida Waters and Aquatic Preserves); Coastal Zone Consistency Determination; cultural resources; coastal barrier resources; contamination; sole source aquifers; noise and vibration; essential fish habitat; potential environmental justice issues as well as secondary, cumulative, and construction-related impacts; air and water quality; navigable waterway crossings; and permits required. The need for right-of-way acquisitions and relocations will also be evaluated. Alternative alignments, designs, station locations, and other measures to avoid, minimize, and mitigate adverse impacts will be developed and evaluated. The exact Purpose and Need and Range of Alternatives for this project will be established after an opportunity by the participating agencies and the public for involvement.

V. Public Involvement

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. The environmental review process for this project will include ''participating agencies'' from Federal, state, local agencies and tribal nations that have an interest in the project. Further, FTA and FDOT will establish a coordination plan for agency and public participation and comment. A public Web site has also been created for the project (*http://www.sfeccstudy.com*) where project information, notification of public meetings, and an opportunity to join the mailing list are provided. A series of public meetings (in conjunction with the project scoping meetings) will be held in North Miami, Miami-Dade County; Fort Lauderdale, Broward County; and, West Palm Beach, Palm Beach County, Florida between April 17th and April 24th, 2006. In addition, a public hearing will be held at the completion of each Tier of the PEIS. Public notice will be given of the time and place of the meetings and hearing. For each Tier, the Draft PEIS will be made available for public and agency review and comment. Formal scoping meetings are being held in conjunction with the public meetings listed above and are published on the project Web site's public meeting page.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the PEIS should be directed to the FTA at the address provided previously.

VI. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the 1990 Clean Air Act Amendments, Section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and Section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, FDOT seeks section 5309 New Starts funding for the project and will therefore be subject to the FTA New Starts regulation (49 CFR part 611). This New Starts regulation requires the submission of certain specified information to FTA to support an FDOT request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Issued on: March 23, 2006.

Yvette G. Taylor,

Regional Administrator.

[FR Doc. E6–4497 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–23511]

Supplemental Request for Comments on Issues Relating to ''Joint Development'' of Intercity Bus and Intercity Rail Stations and Terminals and Extension of Comment Period

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Solicitation of comment; Extension of comment period.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA–LU) enacted certain amendments to the definition of the term ''capital project'' as used in 49 U.S.C. 5301 *et seq.* (Federal Transit Law) relating to ''joint development'' activities by recipients of Federal funds under Federal Transit Law. In order to assist the Federal Transit Administration (FTA) in developing a proposed guidance document concerning the implementation of such amendments, FTA published a proposed guidance document on January 31, 2006 (71 FR 5107). Since publication of that document, FTA identified several other issues on which we would like to receive public input, and, thus, we are extending the comment period for an additional thirty days. Also, please be advised that the previously published guidance on joint development will not operate as interim or final guidance for FTA unless and until otherwise stated by FTA, in writing.

DATES: Comments should be received on or before April 27, 2006. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA–2006–23511] 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: 202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, D.C., 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 the docket number (FTA–2006–23511). 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 the Department's Docket Management System (DMS) Web site located at *http://dms.dot.gov.* This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Robert Tuccillo at (202) 366–4050. For legal questions, please contact Jayme Blakesley at (202) 366–0304. The principal office of FTA is located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Federal Transit Law has included joint development authority since the Federal Public Transportation Act of 1978. In the Transportation Equity Act for the 21st Century, the joint development authority was incorporated into the definition of a public transportation ''capital project'' at 49 U.S.C. 5302(a)(1)(G). This made joint development activities eligible for reimbursement under formula and discretionary public transportation grant programs.

New Authority

SAFETEA–LU adds intercity bus and rail stations and terminals to the joint development authority and exempts such facilities from the prohibition on funding the construction of commercial, revenue-producing facilities.

As amended by SAFETEA–LU, the definition of ''capital project'' provides, in pertinent part, as follows:

(1) Capital project.—The term ''capital project'' means a project for—

(G) a public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, *construction, renovation, and improvement of intercity bus and intercity rail stations and terminals* and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation—

(i) including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) excluding construction of a commercial revenue-producing facility (*other than an intercity bus station or terminal*) or a part of a public facility not related to public transportation . * * * [emphasis added]

FTA proposes to implement the joint development authority by providing guidance in Appendix A to Circular 9300.1A (Capital Program: Grant Application Instructions) and in Appendix B to Circulars 5010.1C and 9030.1C (Grants Management Guidelines and Urbanized Area Formula Program: Grant Application Instructions). In addition to the proposed guidance document published on January 31, 2005, and before issuing the appendices for public comment in accordance with 49 U.S.C. 5334(l), FTA is soliciting additional comment on the issues identified below and we invite those reviewing this document to bring to our attention issues we might not have identified, due to state law or local share issues that may affect how this new authority can be implemented.

1. Interpretation of ''Capital Project''

FTA proposes to interpret the definition and operation of the term ''capital project'' set forth at 49 U.S.C. 5302(a)(1)(G) with respect to ''construction, renovation and improvement of intercity bus and intercity rail stations and terminals'' as follows: To be eligible for funding pursuant to a program established by Federal Transit Law, the ''construction, renovation and improvement of intercity bus and intercity rail stations and terminals'' must be ''a public transportation improvement'' that (A) ''enhances economic development or incorporates private investment'' and (B) that either (i) ''enhances the effectiveness of a public transportation project and relates physically or functionally to that public transportation project'' or (ii) ''establishes new or enhanced coordination between public transportation and other transportation.'' FTA requests comment on the above interpretation of 49 U.S.C. 5302(a)(1)(G).

2. ''Enhances Economic Development or Incorporates Private Development''

As noted above, it is a threshold requirement for Federal funding of ''construction, renovation and improvement of intercity bus and intercity rail stations and terminals'' that such construction, renovation and improvement enhance economic development or incorporate private investment. FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal enhance economic development or incorporate private investment.

3. ''Enhances the Effectiveness of Public Transportation Project''

The construction, renovation and improvement of intercity bus and intercity rail stations and terminals may receive Federal funding if, among other things, such construction, renovation and improvement ''enhances the effectiveness of a public transportation project.'' FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal ''enhances the effectiveness of a public transportation project.''

4. The Meaning of ''Related Physically or Functionally''

The construction, renovation and improvement of intercity bus and intercity rail stations and terminals may receive Federal funding if, among other things, such construction, renovation and improvement are ''related physically or functionally'' to a public transportation project. Based on the implementation of this authority over the last twenty years, FTA has construed ''related physically or functionally'' to require, as a threshold matter, that such construction, renovation and improvement be located on land used for a transit purpose. Within this framework, FTA has previously preferred projects where the joint development was fully integrated into the overall structural envelope of the public transportation project, thus ensuring a physical relationship.

However, the addition of intercity bus and train stations to the definition of a public transportation capital project raises some questions regarding functional relationship. The disjunctive requirement of physical ''or'' functional relation suggests that such a facility could be built separately from—but in functional relation to—a public transportation facility and located on land not used for a transit purpose, so long as such facility bore a functional relation to public transportation. FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus and intercity rail station or terminal relate ''functionally'' to a public transportation project. In particular, FTA solicits examples of joint development projects that are functionally related to a public transportation facility without being physically related (that is, without being contiguous or structurally integrated). In addition, FTA invites responses to the following related questions:

• Should FTA consider any other indicators of functional relationship, such as facility design, presence or function of pedestrian improvements?

• May the functional relationship extend across an intervening street, major thoroughfare or unrelated property? For example, is a public transportation facility on one side of the street still functionally related to an intercity bus station on the opposite side of the street?

• What is sufficient to establish a functional relationship that does not involve physical proximity to and/or physical connection to a public transportation facility? Please provide examples that illustrate such a relationship.

• If FTA determines that a free-standing facility is functionally related to a public transportation facility or system, how should it determine the amount of parking that is an eligible cost?

5. Meaning of ''New or Enhanced Coordination between Public Transportation and Other Transportation''

A joint development project may be eligible for Federal funding if, among other things, it establishes ''new or enhanced coordination between public transportation and other transportation.'' FTA invites recommendations of criteria by which FTA may determine whether the construction, renovation and improvement of an intercity bus or intercity rail station or terminal establishes ''new or enhanced coordination between public transportation and other transportation.'' In addition, FTA invites responses to the following related questions:

• Is there a minimum or basic standard to estimate ''new or enhanced coordination''? That is, by what metric should the new or enhanced coordination be assessed—increased trips, increases in certain kinds of trips, revenue generated or revenue shared?

• What level of public transportation service should there be with which the joint development project might establish ''new or enhanced coordination''? Is an hourly scheduled service bus stop sufficient, or does it require at least a main line route or terminal?

• FTA seeks practical, recent examples of new or enhanced coordination between public transportation and other transportation, particularly where multiple modes are involved, such as public transportation with intercity rail and/or bus, or airports, or taxi.

6. Requirements Regarding ''Satisfactory Continuing Control''

The law provides significant flexibility to public transportation grantees to encumber their federally supported assets for public transportation purposes, with prior FTA approval. Sections 5307(d)(1)(B) and 5309(c)(1)(B) of Title 49 require that the grantee has or will have (or certify that it has or will have) ''satisfactory continuing control over the use of the equipment [and/or] facilities. * * *'' FTA has allowed public transportation grantees to transfer the title to their federally-funded rolling stock to facilitate lease financing or to transfer real property to a third party to facilitate a joint development, again, with prior FTA approval. In addition, FTA invites responses to the following related questions:

• In the case of an intercity bus or rail terminal, how should the grantee demonstrate satisfactory continuing control?

• If FTA allows a free-standing intercity bus terminal to be built with FTA funds, should FTA record its interest in the real estate as allowed for in the Master Agreement? Should the grantee? If no interest is recorded, how and who will be responsible for monitoring future encumbrances of the asset as required by the common grant rule?

• Once an intercity bus or rail terminal is constructed with FTA funds, should the grantee or the intercity bus or rail operator control the quality of maintenance, the hours of facility operations, or the manner of functional relationship to public transportation?

7. Requirements Regarding Maintenance

Section 5309(c)(1) of Title 49 provides that ''[t]he Secretary may not approve a grant for a project under [49 U.S.C. 5309] unless the Secretary determines that * * * the applicant has, or will have the capability and willingness to maintain the equipment or facilities.'' Similarly, 49 U.S.C. 5307(d) provides that ''[a] recipient may receive a grant in a fiscal year only if * * * the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of [49 U.S.C. 5307] and a certification for that fiscal year that the recipient * * * will maintain equipment and facilities. * * *'' FTA invites recommendations of criteria by which FTA may determine whether a recipient has the capability and willingness to maintain (or that the recipient will maintain) the construction, renovation and improvement of an intercity bus and intercity rail stations and terminals funded pursuant to 49 U.S.C. 5309(c)(1) or 49 U.S.C. 5307(d). FTA also invites comment on to what degree, if any, FTA should investigate the quality of certification by a recipient that it ''will maintain equipment and facilities'' pursuant to 49 U.S.C. 5307(d)(1)(C), given that in most cases the recipient will be a public body such as a transit authority. In addition, FTA invites responses to the following related questions:

• Once an intercity bus or rail terminal or station is constructed with FTA funds, what should be the permissible use of program income generated by the intercity bus or rail terminal or station? Should FTA allow program income to be used for debt service, return on investment of any private person financing the facility, or operation and maintenance costs, with excess revenues used for purposes allowable under Federal Transit Law?

• Should FTA ensure that there is an enforceable maintenance agreement between the transit authority and private company as a pre-requisite to grant approval?

• Do transit authorities have funding and legal authority to assume the maintenance responsibility for private facilities?

8. Rules Concerning Cessation of Use of a Federally-Funded Intercity Bus or Rail Terminal or Station for Purposes Allowable Under Federal Transit Law

The construction of an intercity bus or rail terminal with Federal grant funds establishes a ''Federal Interest'' in the resulting project, such that the project is governed by the real estate disposition requirements of the common grant rule at 49 CFR 18.31 and Circular 5010.1C, as well as by disposition rules at 49 U.S.C. 5334(h) and the common grant rule set forth at 49 CFR 18.32. (See also Section 19 of the Master Agreement.) If the property ceases to be used for a public transportation purpose, including an intercity bus or rail purpose, then the property may be disposed of as ''excess property.'' In such instance, the grantee or sub-grantee must request disposition instructions from the granting agency. These instructions may include requiring a pro-rata return of disposition proceeds to the U.S. Treasury, or the grantee may be allowed to apply the proceeds to reduce the net capital cost of a future public transportation project. The property may also be transferred to another public use with prior FTA approval, without having to return the

Federal investment. In addition, FTA invites responses to the following related questions:

• How should this provision be implemented for intercity bus or rail terminal projects undertaken on land not owned by the public transportation agency?

• On what basis might non-transportation joint development activities be considered in this context, particularly with regard to the generation of program income and joint development transfer of real property? FTA seeks practical examples of intercity bus or rail terminal reuse, after cessation of intercity service.

9. Eligibility of Furniture, Fixtures and Equipment as a ''Capital Project''

Generally, FTA has funded transportation-related furniture, fixture, and equipment (FFE) as eligible costs for public transportation projects. FFE related to community services and private, profit-making activities has never been considered eligible, even in the context of joint development. For example, when FTA provided funding for the Linden Center day care in central Ohio, this did not extend to lighting fixtures, tables, chairs, blackboards, or other items required for the day care, even though many of these items were permanently affixed or built into the facility. These items were paid for by the tenant. FTA is considering applying this same standard to intercity bus and rail terminals that are qualified as public transportation capital projects. Because, to date, these items are not considered eligible for Federal funding, they have also not been previously allowed as local match for Federal grant dollars. In addition, FTA invites responses to the following related question:

• How should FTA treat FFE related to lunch counters, vending kiosks, and miscellaneous retail activities, such as those found in many intercity bus and rail terminals?

Issued on the 22nd day of March, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. E6–4441 Filed 3–27–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (OJT)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 2006.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–6950 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (OJT).'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (OJT)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Agreement to Train On The Job Disabled Veterans, VA Form 28–1904.

OMB Control Number: 2900–New (OJT).

Type of Review: Existing collection in use without an OMB number.

Abstract: VA Form 28–1904 is a written agreement between an On the Job Training *(OJT)* establishment and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 9, 2005 at page 73329.

Affected Public: Business or other for-profit, not-for-profit institutions, individuals or *households*, and farms.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 600.

Dated: March 16, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4417 Filed 3–27–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on applicants' qualifications as a fee appraiser or compliance inspector.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 30, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0113'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Fee or Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Revision of a currently approved collection.

Abstract: Applicants complete VA form 26–6681 to apply for a position as a designate fee appraiser or compliance inspector. VA will use the data collected to determine the applicant's experience in the real estate valuation field.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 6,200.

Dated: March 16, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4419 Filed 3–27–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 27, 2006.

For further Information or a Copy of the Submission Contact: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6590 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0198.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), VA Form 10–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–8678 is used to gather the necessary information to determine a veteran's eligibility for clothing allowance benefits. Clothing allowance is payable if the veteran uses a prosthetic or orthopedic device (including a wheelchair) that tends to wear out or tear clothing or is prescribed medication for skin condition that causes irreparable damage to outer garments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 20, 2005, at pages 75542–75543.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: March 18, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–4421 Filed 3–27–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
March 28, 2006

Part II

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 325 and 332

Environmental Protection Agency

40 CFR Part 230

Compensatory Mitigation for Losses of Aquatic Resources; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 325 and 332

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[EPA–HQ–OW–2006–0020]

RIN 0710–AA55

Compensatory Mitigation for Losses of Aquatic Resources

AGENCIES: U.S. Army Corps of Engineers, DoD; and Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA) are proposing to revise regulations governing compensatory mitigation for activities authorized by permits issued by the Department of the Army. The proposed regulations are intended to establish performance standards and criteria for the use of permittee-responsible compensatory mitigation and mitigation banks, and to improve the quality and success of compensatory mitigation projects for activities authorized by Department of the Army permits. The proposed regulations are also intended to account for regional variations in aquatic resource types, functions, and values, and apply equivalent standards to each type of compensatory mitigation to the maximum extent practicable. The proposed rule includes a watershed approach to improve the quality and success of compensatory mitigation projects in replacing losses of aquatic resource functions, services, and values resulting from activities authorized by Department of the Army permits. We are proposing to require in-lieu fee programs, after a five-year transition period, to meet the same standards as mitigation banks.

DATES: Submit comments on or before May 30, 2006.

ADDRESSES: You may submit comments, identified by docket number EPA–HQ–OW–2006–0020 and/or RIN 0710–AA55, by any of the following methods:

- Federal eRulemaking Portal (recommended method of comment submission): *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *ow-docket@epamail.epa.gov.* Include the docket number, EPA–HQ–OW–2006–0020, and/or the RIN number, 0710–AA55, in the subject line of the message.
- Mail: USEPA Docket Center, Attention Docket Number EPA–HQ–OW–2006–0020, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: USEPA Docket Center, Room B102, EPA West, Attention Docket Number EPA–HQ–OW–2006–0020, 1301 Constitution Ave., NW., Washington, DC 20460. 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 number EPA–HQ–OW–2006–0020 and/or RIN 0710–AA55. 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 commenter indicates that 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 we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any 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: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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 *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil*, or Mr. Palmer Hough at 202–566–8323 or by e-mail at *mitigationrule@epa.gov.* Information can also be found at the EPA compensatory mitigation webpage at: *http://www.epa.gov/wetlandsmitigation.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 314 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) requires the Secretary of the Army, acting through the Chief of Engineers, to issue regulations ''establishing performance standards and criteria for the use, consistent with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), of on-site, off-site, and in-lieu fee mitigation and mitigation banking as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section.''

The statute states that the regulation should address wetlands compensatory mitigation. However, we believe that this regulation should apply to compensatory mitigation for all types of aquatic resources that can be impacted by activities authorized by Department of the Army permits, including streams and other open waters. We also believe that this regulation should apply to compensatory mitigation required for activities in navigable waters of the United States that are subject to regulatory jurisdiction under Sections 9 and 10 of the Rivers and Harbors Act of 1899. We believe this approach does not conflict with the intent of the statute, and will provide the regulated public with clear national standards and requirements for all aquatic resource compensatory mitigation required by Department of the Army permits, while

allowing district engineers flexibility to address permit-specific situations. We also believe this approach will enhance regulatory efficiency and improve protection of the aquatic environment.

The statute states that the regulation should be developed by the Department of the Army, with the provision that the standards and criteria developed be consistent with Section 404 of the Clean Water Act. We believe that the goals of the Clean Water Act and the Defense Authorization Act will be more effectively met if this proposed rule is issued jointly by the Corps and EPA. A jointly-issued proposed rule reflects the important roles played by both agencies in the Section 404 program, in which the permit program is administered by the Corps, while the responsibility for developing the regulations providing the environmental criteria for permit issuance is given to EPA. Since the proposed rule is in part a clarification of EPA regulations concerning Section 404 mitigation, a joint rule helps to ensure maximum consistency in the implementation of the section 404 regulatory program. Furthermore, CWA Section 501(a) authorizes EPA to conduct any rulemaking necessary to carry out EPA's functions under the Clean Water Act.

Joint issuance also provides basic regulatory consistency. Environmental criteria for the selection of disposal sites for discharges of dredged or fill material are set by EPA regulations at 40 CFR part 230, and referenced by Corps regulations at 33 CFR part 320. Since the proposed rule is in part a clarification of EPA's regulations at 40 CFR part 230, EPA must add the proposed rule text to its existing regulations in order to maintain consistency between the two linked Parts of the CFR. Making the two agencies' additions concurrent will avoid any confusion on the part of the regulated community and the public. Moreover, the history of a joint EPA/Corps relationship on mitigation issues is long. All national guidance on compensatory mitigation has been developed and issued jointly by the Corps and EPA, including Regulatory Guidance Letter 02–02 (issued on December 24, 2002); the ''Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks'' (as published in the November 27, 1995, issue of the **Federal Register**, 60 FR 58605); the ''Federal Guidance on the Use of In-Lieu Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act'' (as published in the November 7, 2000, issue of the **Federal Register**, 65 FR 66914); and the ''Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines'' (issued on February 6, 1990).

We also believe the proposed rule establishes, to an extent that is feasible and practical, equivalent standards for all forms of compensatory mitigation, given the basic differences between the current mechanisms for providing compensatory mitigation (i.e., permittee-responsible mitigation, mitigation banks, and in-lieu fee programs). In many cases, it is not practical to impose all the same requirements on permittee-responsible mitigation projects as on mitigation banks, so some differences in the requirements for these types of mitigation remain. However, we are proposing to require in-lieu fee program sponsors to modify their programs within five years to comply with the same standards and requirements as mitigation banks, to provide greater assurances that compensatory mitigation projects undertaken by in-lieu fee programs will successfully replace lost aquatic resource functions and services. We are also seeking comment on alternative approaches that would retain in-lieu fee programs as a separate category of mitigation with somewhat different requirements. These alternatives are explained in further detail in Section VI of this preamble.

By establishing, to the maximum extent practicable, equivalent standards for all forms of compensatory mitigation, we believe success rates of compensatory mitigation projects will improve, and entrepreneurs and others will be encouraged to develop mitigation banks. Improving the processes applicable to the development and approval of mitigation banks is expected to result in more mitigation banking proposals, which would provide more compensatory mitigation in advance of authorized impacts to waters of the United States.

The proposed rule does not apply to compensatory mitigation that may be required for impacts other than to aquatic resources resulting from activities authorized by DA permits, such as impacts to historic properties. Under appropriate circumstances, a DA permit may require compensatory mitigation measures to ensure compliance with the Endangered Species Act or the National Historic Preservation Act, or to address some other public interest requirement. Those compensatory mitigation requirements are addressed through other regulations and authorities.

During the development of the proposed rule, we considered the following compensatory mitigation guidance documents and lessons learned from their implementation: Regulatory Guidance Letter 02–02 (issued on December 24, 2002); the ''Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks'' (as published in the November 27, 1995, issue of the **Federal Register**, 60 FR 58605); the ''Federal Guidance on the Use of In-Lieu Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act'' (as published in the November 7, 2000, issue of the **Federal Register**, 65 FR 66914); and the ''Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines'' (issued on February 6, 1990).

In preparing the proposed rule, we considered the findings and recommendations in the National Research Council's report issued in 2001 entitled ''Compensating for Wetland Losses Under the Clean Water Act'' (NRC Report). We also contemplated other studies and documents cited in the draft Environmental Assessment/Regulatory Analysis that was prepared by the Corps for this proposed rule. The Environmental Assessment/Regulatory Analysis is available at the Corps Headquarters Regulatory Home page at: *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm.* Hard copies of this document can be obtained by contacting Corps Headquarters at the phone number provided in the **FOR FURTHER INFORMATION CONTACT** section, above.

The proposed rule incorporates many of the recommendations suggested in the NRC Report to improve the ecological success and sustainability of wetland compensatory mitigation projects. Through the standards and requirements in this proposed rule, we intend to improve the quality and success of aquatic resource restoration, establishment, enhancement, and preservation activities used to provide compensatory mitigation for DA permits, and to help maintain and improve the aquatic environment within watersheds.

In the NRC Report, the committee concluded that a watershed approach would improve permit decision making, and stated that wetland functions must

be understood from a watershed perspective to fulfill the objectives of the Clean Water Act. The committee noted that an automatic preference for in-kind and on-site compensatory mitigation is inconsistent with a watershed approach since there are circumstances in which on-site or in-kind mitigation is neither practicable nor environmentally preferable. In addition, the committee suggested using an analytical process for assessing wetland needs within a watershed and the potential for compensatory mitigation projects to persist over time.

In the proposed rule, we revise compensatory mitigation policies and procedures to conform with current principles of ecological restoration and landscape ecology. The proposed rule also aims to reduce regulatory burdens on mitigation bank sponsors by making the mitigation bank approval process more efficient through changes in the review and approval process.

The proposed rule also complements the Corps' and EPA's ongoing efforts to implement the National Wetlands Mitigation Action Plan (NWMAP). In response to the NRC report and other independent critiques of the effectiveness of compensatory mitigation for authorized losses of wetlands and other aquatic resources under Section 404 of the Clean Water Act, the Corps, EPA, and the Departments of Agriculture, Commerce, Interior, and Transportation released the NWMAP on December 26, 2002. The NWMAP includes 17 tasks designed to improve the ecological performance and results of compensatory mitigation. Thus far, eight of the tasks called for in the NWMAP have been completed and work continues on efforts to improve wetland impact and mitigation data collection and tracking. However, work on the remaining guidance documents called for in the NWMAP awaits finalization of this proposed rule.

The proposed rule is consistent with Executive Order 13352, Facilitation of Cooperative Conservation. The proposed rule includes collaborative approaches to decision-making for compensatory mitigation required by DA permits consistent with the definition of cooperative conservation in the Order. The provisions of the rule will ensure that determinations regarding compensatory mitigation requirements take into account the interests of landowners and other legally recognized interests in land and other natural resources, and accommodate agency and local participation in federal decision-making.

II. General Principles in the Proposed Rule

For the purposes of the Corps Regulatory Program, compensatory mitigation is used to replace aquatic resource functions, services, and values that are lost to permitted impacts. Compensatory mitigation for losses of aquatic resources can help sustain or improve watershed functioning, and support the objective of the Clean Water Act, which is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (33 U.S.C. 1251(a)). One intent of the proposed rule is to improve the quality of compensatory mitigation for DA permits, to satisfy the objective of the Clean Water Act by improving the performance of compensatory mitigation projects in replacing aquatic resource functions, services, and values. Another intent of the proposed rule is to improve regulatory efficiency, especially for the review, approval, and implementation of mitigation banks. Finally, the proposed rule fulfills the mandate to ensure opportunities for federal agency participation in mitigation banking.

In addition to supporting the objective of the Clean Water Act, the proposed rule will support the ''no overall net loss'' goal for wetland acreage and functions, through appropriate site selection for wetlands compensatory mitigation projects. Locating compensatory mitigation projects where they will provide the desired habitat type and functions to appropriately offset impacts will support the ''no overall net loss'' goal for wetland acreage and function.

The proposed rule does not alter Corps regulations which address the general mitigation requirements for DA permits. In particular, it does not alter the circumstances under which compensatory mitigation is required. Also, the proposed rule does not alter Corps or EPA enforcement authorities for the section 404 program, as specified in sections 301(a), 308, 309, 404(n), and 404(s) of the Clean Water Act.

Site selection is a critical planning step for compensatory mitigation projects, and the watershed approach in the proposed rule is intended to focus on choosing appropriate locations for compensatory mitigation activities. Restoring or establishing a specific aquatic habitat type, such as a wetland, requires careful site selection for two primary reasons. First, development activities may alter the interaction between hydrology, soils, and organisms within a landscape, affecting the type of habitat that can be supported by the project site. For example, forested wetlands require narrow hydrologic regimes because many tree species cannot tolerate long periods of inundation. Development activities may change local hydrology, resulting in new patterns of inundation and saturation that cannot support forested wetlands. Therefore, it is important to find a compensatory mitigation project site that will support the appropriate hydrology for the desired type of wetland habitat. Second, even if the desired habitat type can be restored or established at that site, surrounding development may result in an isolated or fragmented habitat that is less capable of supporting viable populations of species of import. Motile species require corridors to move between different habitats in the landscape, and if the surrounding area is occupied by roads and buildings, the ability of many species to move between habitats and interact with each other is restricted. Therefore, compensatory mitigation projects, especially those that are intended to replace wetland habitat, need to be planned within larger landscape contexts, such as watersheds. In its report on wetland compensatory mitigation, the NRC stated that ''[l]andscape position, hydrologic variability, species richness, biological dynamics, and hydrologic regime are all important factors that affect wetland restoration.''

For activities authorized by DA permits in coastal and urban areas, compensatory mitigation required by district engineers will be located in areas where it is appropriate and practicable to conduct aquatic resource restoration, establishment, and enhancement activities. It is important that coastal and other urban areas do not become devoid of aquatic resources simply because it is more difficult to successfully restore or establish aquatic habitat in developing areas. In some cases, however, preservation may be the most appropriate form of compensatory mitigation in coastal and urban areas. In addition to providing important ecological functions, wetlands and other aquatic resources also perform important services, such as wildlife viewing and education, that can only be accomplished when people have opportunities to interact with those aquatic resources. The functions and services that aquatic resources perform in turn provide the basis for the values that society derives from them. These include use values, such as recreation, and non-use values such as biodiversity and stewardship for future generations. Aquatic resource functions, services, and values should be considered when

evaluating sites in developed areas as options for providing compensatory mitigation. Mitigation projects for impacts authorized by DA permits should compensate for lost functions and services. While values are also considered as part of the public interest review, it is not always possible to fully compensate for lost values, as these are often dependent on proximity to population centers. Replacing aquatic resources at more remote locations may enhance some values (e.g., preservation of species) while decreasing others (e.g., recreational enjoyment).

Within a watershed context, it may be more appropriate to replace certain aquatic resource functions on-site, whereas it may be more appropriate to replace other functions off-site. For example, it may be environmentally preferable, to replace hydrologic and water quality functions at the impact site with a mitigation project that performs these functions, and to replace habitat functions at an off-site location, such as a mitigation bank or a compensatory mitigation project site near a park or nature reserve.

Through the watershed approach in the proposed rule, we intend to improve environmental outcomes of compensatory mitigation required for DA permits, including the effectiveness of compensatory mitigation in replacing impacted aquatic resource functions. The watershed approach uses a landscape perspective that places primary emphasis on site selection, through consideration of landscape attributes that will help provide the desired aquatic resource types and ensure they are self-sustaining. The watershed approach also considers how other landscape elements (e.g., other natural resources and developments) interact with compensatory mitigation project sites and affect the functions they are intended to provide.

In the proposed rule, the district engineer determines whether the compensatory mitigation option or proposal submitted by the permit applicant is adequate to offset unavoidable impacts, based on what is practicable and what will appropriately compensate for the aquatic resource functions and services that will be impacted as a result of the permitted activity. In pre-application consultation, the Corps may also provide information on existing watershed plans or watershed needs.

The proposed rule also establishes that the district engineer makes decisions regarding the approval of mitigation banking instruments, after coordinating a review of the prospectus for the proposed mitigation bank and the draft mitigation banking instrument with an Interagency Review Team (IRT). We are proposing to establish clearly defined time frames for this review and a dispute resolution process whereby members of the IRT can expeditiously elevate issues associated with proposed mitigation banks for higher level review where necessary.

III. Watershed Approach

In the NRC Report, the committee recommended that the Corps adopt a watershed-based approach to compensatory mitigation. The committee stated that the ecological functions of a restored or established wetland are dependent on its design and its setting or context within a watershed. The committee also said that the types and locations of wetlands in the landscape are important for providing desired functions.

Ideally, the watershed approach is based on a formal watershed plan, developed by Federal, state, and/or local environmental managers in consultation with affected stakeholders. Currently, there are many areas where no watershed plan exists. The Corps and EPA are committed to working with our counterparts at other levels of government to develop watershed plans, especially for areas facing significant development pressure. In the meantime, the watershed approach described in the NRC Report does not require a formal watershed plan. Instead, the watershed approach may be based on a structured consideration of watershed needs and how wetland types in specific locations can fulfill those needs.

The use of a watershed approach is based on analysis of information regarding watershed conditions and needs. Where an applicable watershed plan exists, such information will generally already have been considered in the development of the plan. Where no such plan exists, project sponsors may propose compensatory mitigation based on the watershed approach using appropriate information from other sources. Such information includes: Current trends in habitat loss or conversion, cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species, site conditions that favor or hinder the success of mitigation projects, chronic environmental problems such as flooding or poor water quality, and local watershed goals and priorities. Project sponsors should make a reasonable effort, commensurate with the scope and scale of the project and impacts, to obtain as much of this information as possible as they design the compensatory mitigation projects. Project sponsors may consult with the Corps to see if such information has been developed in the past in association with other projects in the watershed. For smaller projects requiring DA authorization, all of the types of information listed above may not be available, but that information should generally be available (or developed) for larger projects.

The agencies request comment on whether the rule should specify minimal information requirements for use of the watershed approach. Commenters should bear in mind that specifying minimum information requirements will likely limit the areas where a watershed approach can be used, at least in the medium term, as much of the above information is currently not available for many areas. This problem was recognized by the NRC, which recommended that in such situations watershed based decision-making should rely on the scientific expertise of wetlands program staff (i.e., Corps permit writers and other Federal agency review staff) and broad-based stakeholder participation. As discussed below, the proposed rule includes a requirement that information on how a prospective permittee plans to address avoidance, minimization, and compensatory mitigation requirements be included in the permit application and published by the Corps in the public notice for the permit application. This requirement is intended to promote the kind of broad-based stakeholder involvement in watershed based mitigation decisions envisioned by the NRC Report.

A watershed approach to compensatory mitigation involves a regional or landscape perspective, and should involve consideration of Federal, Tribal, state, community, and private interests, including the requirements of other programs and objectives, such as habitat conservation, storm water management, flood control, pollution prevention, and economic development when determining compensatory mitigation requirements for DA permits.

The agencies note that the term ''watershed approach'' is now used by a variety of Federal, State, and local agencies, as well as by private parties, but a consensus definition of this term has not yet emerged. The watershed approach presented in this proposed rule is a framework being proposed for use in determining compensatory mitigation requirements for DA permits. The watershed approach described in the proposed rule does not supersede or replace other uses of the term ''watershed approach'' in natural

resource management programs conducted by other government agencies. We are soliciting comments on whether, and if so, how, the watershed approach in the proposed rule differs from the watershed approaches used in other natural resource management programs, and how any such differences may affect implementation of the watershed approach for determining compensatory mitigation requirements for DA permits.

The watershed approach in the proposed rule will be implemented by district engineers with available information to determine the types and locations of compensatory mitigation activities that would best serve the watershed. Available information used by district engineers includes current trends in habitat loss or conversion, cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species, site conditions that favor or hinder the success of mitigation projects, chronic environmental problems such as flooding or poor water quality, local watershed goals and priorities, assessments of watershed conditions, best professional judgment, and site conditions, as well as other relevant data.

The watershed approach in the proposed rule will help support the objective of Clean Water Act, and is intended to result in more effective replacement of aquatic resource functions impacted by activities authorized by DA permits. The level of detail used in the watershed approach for a specific activity is dependent on the availability of information and on the scope and scale of that activity.

IV. Organization of the Proposed Rule

The proposed compensatory mitigation regulation in 33 CFR part 332 [40 CFR part 230], is organized into the following sections:

Section 332.1 [230.91], *Purpose and general considerations*, describes the basic purpose of the proposed rule and general principles concerning compensatory mitigation.

Section 332.2 [230.92], *Definitions*, provides definitions of important terms relating to compensatory mitigation and the Corps Regulatory Program.

Section 332.3 [230.93], *General compensatory mitigation requirements*, describes general compensatory mitigation requirements for DA permits, including permit conditions and financial assurances. This section also describes the watershed approach to compensatory mitigation.

Section 332.4 [230.94], *Planning and documentation*, describes the review of proposed compensatory mitigation activities, as well as requirements for mitigation plans.

Section 332.5 [230.95], *Ecological performance standards*, describes principles for establishing ecological performance standards for compensatory mitigation projects.

Section 332.6 [230.96], *Monitoring*, describes general requirements for monitoring compensatory mitigation projects.

Section 332.7 [230.97], *Management*, describes general requirements for site protection, sustainability, adaptive management, and long-term management of compensatory mitigation projects.

Section 332.8 [230.98], *Mitigation banks*, provides requirements and standards that are applicable to mitigation banks.

Section 332.9 [230.99], *In-lieu fee programs*, establishes deadlines for existing in-lieu fee programs to modify their current agreements to comply with the requirements of this rule.

It is important to note that §§ 332.1 to 332.7 apply to all new compensatory mitigation projects, including mitigation banks, while §§ 332.8 and 332.9 contain special provisions for new mitigation banks and existing in-lieu fee programs, respectively. Existing mitigation banks may continue operating under the terms of their approved instruments, but any modifications to such instruments, including the addition of new sites for umbrella instruments, would be subject to the requirements in this rule. New in-lieu-fee programs would not be approved once the rule goes into effect. Existing in-lieu-fee programs may continue to operate under the terms of their approved instrument for up to five years after the effective date of the rule.

V. Discussion of Specific Sections of the Proposed Rule

The proposed rule is presented in two parallel sections: changes to Corps regulation in 33 CFR and changes to EPA regulation in 40 CFR. The two sections are almost entirely the same, with minor exceptions. These include: (1) Corps changes to permit application requirements at 33 CFR 325.1; (2) Conforming changes to EPA's existing mitigation regulations at 40 CFR part 230, making appropriate citations for the addition of new §§ 230.91 through 230.99; and (3) References to the Rivers and Harbors Act of 1899, in which the EPA does not have a regulatory role, have been omitted from the text in part 230.

33 CFR 325.1 Application for Permits

Since § 332.4(b)(1) of the proposed rule requires applicants for standard section 404 permits to submit a statement explaining how impacts to waters of the United States are to be avoided, minimized, and compensated, we are also proposing to modify § 325.1(d) by adding a new paragraph (paragraph (d)(7)). This new paragraph would further clarify the information required for a complete standard permit application for activities that involve discharges of dredged or fill material into waters of the United States, so that we can describe the proposed avoidance, minimization, and compensation in the public notice. The remaining paragraphs in this section would be renumbered, but the text of those paragraphs would remain the same.

40 CFR 230.12 Findings of Compliance or Non-Compliance With the Restrictions on Discharge

Section 230.12(a)(2) specifies that permits may only be issued if certain conditions are met that avoid, minimize, and compensate for impacts to aquatic resources. The proposed change would indicate that requirements for compensation for impacts can be found in Subpart J as well as Subpart H.

40 CFR Part 230 Subpart H—Actions To Minimize Adverse Effects

We propose to add a sentence to the introductory ''Note'' of Subpart H indicating that Subpart J also contains requirements regarding compensating for impacts to aquatic resources. At § 230.75(d), we propose to add a similar reference to Subpart J following the second sentence of the paragraph.

Other than the inclusion of the citations described above noting the addition of Subpart J, we are not seeking comment on the existing text or provisions in Subparts B or H.

33 CFR 332.1 and 40 CFR 230.91 Purpose and General Considerations

The proposed rule will not alter the circumstances under which the district engineers require compensatory mitigation. In other words, the threshold for determining when compensatory mitigation is required for a particular activity that needs a DA permit is unchanged by the proposed rule. For example, district engineers will continue to use the criteria at 33 CFR 320.4(r) and 33 CFR 330.1(e)(3) to determine when compensatory mitigation should be required. The proposed rule will not increase compensatory mitigation requirements, but it focuses instead on where and how

compensatory mitigation will be provided.

The proposed rule also does not affect regulatory jurisdiction under Section 404 of the Clean Water Act or Sections 9 and 10 of the Rivers and Harbors Act of 1899. However, areas not subject to regulatory jurisdiction under these statutes may be used as compensatory mitigation, if the creation, restoration, enhancement, or preservation of aquatic resources in those areas will compensate for ecosystem functions lost at the impact site.

33 CFR 332.2 and 40 CFR 230.92 Definitions

The definitions provided in this section of the draft rule are intended to provide clarity to the regulated public, and promote consistency in the implementation of this rule. The definitions were adapted from several sources, including the Federal guidance documents listed in the ''Background'' section in this preamble.

We are proposing a definition of the term ''adaptive management'' as follows. *Adaptive management* means the development of a management strategy that anticipates the challenges associated with likely future impacts to the aquatic resource functions of the mitigation site. It acknowledges the risk and uncertainty of compensatory mitigation projects and allows modification of those projects to optimize performance. The process will provide guidance on the selection of appropriate remedial measures that will ensure the continued adequate provision of aquatic resource function and involves analysis of monitoring results to identify potential problems of a compensatory project and identification of measures to rectify those problems.

In the September 2003 report of the National Environmental Policy Act (NEPA) Task Force, which is entitled ''Modernizing NEPA Implementation,'' the NEPA Task Force recommended that the NEPA workgroup consider establishing a definition of adaptive management that would be promulgated in the NEPA regulations at 40 CFR part 1508. If a definition of ''adaptive management'' is promulgated by the Council on Environmental Quality (CEQ), we will evaluate our proposed definition of this term to determine if any changes are necessary to conform with CEQ's final definition. If such changes are necessary, we will propose those changes in a future **Federal Register** notice.

In the proposed definitions of ''on-site,'' we are proposing to add the phrase ''or near'' after the phrase ''parcel of land contiguous to'' to include lands near the impact site as ''on-site'' lands. We are also proposing a corresponding change to the definition of ''off-site'' so that these definitions are parallel to each other.

We are also proposing definitions of the terms ''functions'', ''services'', and ''values.'' All three of these terms have been used by various documents in the past to describe the attributes of aquatic resources that are being replaced through compensatory mitigation. The agencies believe it is important to articulate the differences among these terms and the appropriate role of each within the Section 404 Program.

We are proposing the following definition of ''functions.'' Functions means the physical, chemical, and biological processes that occur in aquatic resources and other ecosystems. The primary purpose of compensatory mitigation is to replace lost aquatic resource functions at the impact site. The agencies have a long standing policy of achieving no overall net loss for wetland acreage and functions. Services means the benefits that human populations receive from functions that occur in aquatic resources and other ecosystems. For example, providing habitat for birds is a biological function of some aquatic habitat types, which in turn provides bird watching services to humans. In general, compensatory mitigation projects, in replacing lost functions at the impact site, should also replace the lost services associated with these functions.

Values means the utility or satisfaction that humans derive from aquatic resource services. Values can be described in monetary terms or in qualitative terms, although many of the values associated with aquatic resources cannot be easily monetized. Values can be either use values (e.g., recreational enjoyment) or non-use values (e.g., stewardship ethic). Values are considered by the District Engineer as part of the public interest review of a proposed project. However, the values associated with compensatory mitigation projects may not fully mirror those lost at the impact site. For example, replacing a resource in a more remote area may reduce use values (because the area is less accessible) while enhancing non-use values (because people may value resources on stewardship grounds more when they are in more pristine areas). We are seeking comment on the definitions in this proposed rule, including the proposed definitions of ''on-site'', ''off-site'', ''functions'', ''services'' and ''values.''

33 CFR 332.3 and 40 CFR 230.93 General Compensatory Mitigation Requirements

This section of the proposed rule establishes criteria for determining the location and type of compensatory mitigation and describes the watershed approach to compensatory mitigation for losses of aquatic resources. When project impacts are located in the service area of an approved mitigation bank, and the mitigation bank has credits available for the type of resource impacted, the project's mitigation requirements may be met by the purchase of an appropriate number of credits from the mitigation bank. The use of a watershed plan is the most preferable option when evaluating permittee-responsible compensatory mitigation proposals and draft mitigation banking instruments. If a watershed plan is not available, the watershed approach described in § 332.3(c) should be used. If it is not practicable to use a watershed approach, then the district engineer will consider the practicability of on-site compensatory mitigation, as well as the compatibility of on-site mitigation with the proposed project. The watershed approach will identify resource types and locations for compensatory mitigation projects within the watershed. It is important to understand that a watershed approach may include on-site compensatory mitigation, off-site compensatory mitigation (including mitigation banks), or a combination of on-site and off-site mitigation. Also, the identified compensatory mitigation projects may be in-kind, out-of-kind, or a mixture of in-kind and out-of-kind compensatory mitigation.

The information used to conduct a watershed approach is listed in § 332.3(c)(3). Where a watershed plan exists, all or most of this information will have been considered in the development of that plan. Where no formal watershed plan exists, project sponsors should make a reasonable effort, commensurate with the scope and scale of the project, to obtain as much of this information as possible as they design the compensatory mitigation projects. Project sponsors may consult with the Corps to see if such information has been developed in the past in association with other projects in the watershed. For smaller projects requiring DA authorization, all of the types of information listed in this paragraph may not be available, but that information should generally be available (or developed) for larger projects.

We are seeking comment on the watershed approach proposed in this rule, as well as the proposed criteria regarding the location of compensatory mitigation projects.

The amount of required compensatory mitigation is dependent upon the functions (or area when functions cannot be readily assessed) lost as a result of the impacts authorized by the DA permit and the functions (or area) provided by the compensatory mitigation project. In some cases, replacing the functions provided by the impacted aquatic resource may be achieved by a compensatory mitigation project smaller in area than the impact site. In other cases, a larger compensatory mitigation project may be needed to replace the functions provided by the impacted aquatic resource.

To determine the amount of compensatory mitigation required for a specific activity, acres or similar units of measure are likely to be the principal units for determining credits and debits. However, in cases where functional assessment methods are available, appropriate, and practical to use, district engineers should use those functional assessment methods to determine how much compensatory mitigation should be required. For activities authorized by general permits, it may not be practical to conduct functional assessments for each general permit activity. For certain types of aquatic resources, such as streams, it may be more appropriate to quantify credits and debits by using linear feet. The value of a credit or debit is dependent upon the amount of aquatic resource functions provided per acre (or linear foot).

In the proposed rule, site selection is a primary consideration for compensatory mitigation projects. The watershed approach provides an analytical approach similar to the approach recommended by the NRC committee. A watershed approach to compensatory mitigation considers the importance of landscape position and resource type for the ecological functions and sustainability of aquatic resources within the watershed. A watershed approach also considers the services provided by aquatic resources, as well as the values derived from aquatic resource functions and services. Such an approach considers how the types and locations of compensatory mitigation projects will provide the desired aquatic resource functions, and will continue to function over time in a changing landscape. It also considers the habitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed, such as storm water management or habitat conservation programs.

Another site selection factor is the compatibility of compensatory mitigation projects with proposed or existing facilities or projects. For example, it is not appropriate to locate compensatory mitigation projects designed to attract wildlife species that are known to be hazardous to aviation near airports. The Federal Aviation Administration issued Advisory Circular 150/5200–33, ''Hazardous Wildlife Attractants on or Near Airports,'' In addition, the ''Memorandum of Agreement Between the Federal Aviation Administration, U.S. Air Force, U.S. Army, U.S. Environmental Protection Agency, and U.S. Department of Agriculture to Address Aircraft Wildlife Strikes, which became effective in July 2003, also addresses this particular issue. District engineers need to consider these types of issues when determining compensatory mitigation requirements for DA permits (see § 332.3(b) of the proposed rule).

If the district engineer determines that all of the aquatic resource functions cannot be effectively replaced at a single site, then more than one site may be used to provide the desired aquatic resource functions. Therefore, to maintain aquatic resource functions in a watershed, the district engineer may require a combination of on-site and off-site compensatory mitigation. For example, on-site compensation may be required to provide water quality, water storage, and flood protection functions and services, while off-site compensation may be required for losses of habitat functions. In general, the proposed rule requires off-site compensatory mitigation to be located in the same watershed as the impact site.

The proposed rule generally requires wetland compensatory mitigation for wetland losses, and stream compensatory mitigation for stream losses. However, the proposed rule provides flexibility for district engineers to require compensatory mitigation that is best for the watershed. For example, out-of-kind compensatory mitigation may involve the restoration or establishment of an aquatic habitat type that is now rare, because of disproportionate impacts to that habitat type in the past. Restoring or establishing rare habitat types may help restore valuable ecological functions and services to the watershed. In the watershed approach in the proposed rule, district engineers will first consider in-kind compensatory mitigation, but if the watershed approach determines that out-of-kind compensatory mitigation would result in greater benefits to the aquatic environment within the watershed, then out-of-kind compensation may be authorized.

The NRC Report stated that the preservation of wetlands is appropriate in a watershed approach to compensatory mitigation, because it helps support the objective of the Clean Water Act. Preservation of aquatic resources helps secure desired wetland types in a watershed and maintain wetland diversity in that watershed. The preservation of aquatic resources through appropriate real estate and legal instruments helps provide long-term maintenance of the aquatic environment in watersheds.

Both wetland and non-wetland riparian areas are also important for maintaining the aquatic resource functions and services of watersheds. Riparian areas are important for stream restoration activities, as well as the restoration of other open waters. Riparian areas are important to streams and other open waters, and help augment aquatic resource functions by moderating temperature changes, removing excess nutrients and pollutants, providing a source of detritus for aquatic food webs, providing aquatic habitat heterogeneity, storing flood waters, stabilizing sediments, and providing habitat for a variety of aquatic and terrestrial species.

Restoration or establishment of non-aquatic riparian areas normally would be used in conjunction with aquatic resource restoration, establishment, enhancement, and/or preservation activities, as part of an overall compensatory mitigation project to offset losses of aquatic resources. With the watershed approach, we are looking at combinations of different habitats as components of a functioning landscape, instead of habitat units in isolation from one another.

The NRC Report also acknowledged the importance of upland areas as part of the watershed approach to compensatory mitigation. The proposed rule also requires consideration of the establishment and maintenance of upland buffers around the restored, established, enhanced, or protected aquatic habitats to ensure the sustainability of those habitats. Buffers may augment aquatic resource functions, and help increase the overall ecological functions of the

compensatory mitigation project site. Under limited circumstances, the district engineer may grant compensatory mitigation credit for upland areas within a compensatory mitigation project, if those uplands increase the overall ecological functioning of the compensatory mitigation site or other aquatic resources in the watershed or ecoregion. For example, uplands may provide connections between aquatic habitats that are essential for the preservation of certain species, such as amphibians. When determining the amount of compensatory mitigation credit provided by uplands, the district engineer must consider whether the uplands perform ecological functions that are important to the watershed and are under threat of loss or substantial degradation.

The proposed rule requires that mitigation providers secure sufficient financial assurances to assure completion of the compensatory mitigation project consistent with an approved mitigation plan. Government agencies may use other mechanisms to provide reasonable assurances that compensatory mitigation projects will be completed, such as partnerships established in accordance with the Economy Act. In cases where alternative mechanisms are used to provide reasonable assurances that compensatory mitigation projects will be completed, financial assurances may not be necessary or appropriate. The district engineer will determine appropriate financial assurances on a case-by-case basis. Financial assurances may take a number of forms including letters of credit, performance bonds, or other sureties. In some circumstances in the past, mitigation providers have allowed their financial assurance arrangements to lapse before the mitigation project was completed leaving the Corps without the necessary funds to ensure completion of the mitigation project should the mitigation provider default. The proposed rule does not specifically address this issue. We are soliciting comment on whether to include a regulatory provision to require that the providers of these financial assurances obtain permission from, or alternatively, notify the district engineer prior to canceling them or allowing them to lapse. We are also soliciting comment on the appropriate time frame (e.g., 120 days) for any such advance notification.

If failure of a compensatory mitigation project is due to natural catastrophes, such as floods, droughts, diseases, or pest infestations, that occur during the monitoring period, the district engineer normally would require the responsible party to implement appropriate remedial measures, unless the compensatory mitigation project is expected to respond to the event in a similar manner as comparable types of aquatic resources in the watershed. After the monitoring period has ended, the district engineer would normally not require remediation if he determines that the failure is due to a natural catastrophe that was beyond the control of the responsible party to prevent or mitigate. In such cases, the provisions of the conservation easement (or other legal mechanism for long-term protection of the site) will remain in effect so that the compensatory mitigation project site will be allowed to continue to evolve through natural ecosystem development processes. This approach to addressing natural catastrophes acknowledges the dynamic nature of the environment.

We are seeking comment on the provisions in this section.

33 CFR 332.4 and 40 CFR 230.94 Planning and Documentation

In paragraph (b) of this section, we are proposing to require applicants for standard permits involving discharges of dredged or fill material into waters of the United States to submit a statement explaining how impacts to waters of the United States will be avoided, minimized, and compensated. Information from that statement will be provided in the public notice for the proposed permit. This requirement will necessitate changing the standard permit application form (ENG Form 4345), and compliance with the requirements of the Paperwork Reduction Act of 1995. Compliance with the Paperwork Reduction Act is discussed in more detail in Section VII, Administrative Requirements, below.

The agencies recognize that government agencies sponsoring projects that require National Environmental Policy Act (NEPA) compliance generally try to coordinate their NEPA review with their DA permit review. This may mean submitting a permit application while the draft Environmental Impact Statement (EIS), including analysis of compensatory mitigation options, is still undergoing public review and comment. We believe that the requirements of paragraph (b) of this section are fully consistent with such efforts. In such cases, the information provided with the permit application should provide a conceptual discussion of the proposed compensatory mitigation, and reference the more detailed description of options in the draft EIS. This should further facilitate public participation in both the permit application and NEPA review process. The purpose of the new permit application requirements is to inform the public of the sponsor's compensatory mitigation plans, as of the time the application is filed, and most importantly, to solicit informed public comment on those plans, in whatever stage of development they may be. It is not necessary for the final compensatory mitigation option to have been selected prior to submitting a DA permit application.

Paragraph (c) of this section of the proposed rule requires permittees or mitigation bank sponsors to submit draft and final mitigation plans to district engineers. In the proposed rule, there is a requirement for the district engineer to approve the final mitigation plan prior to issuing the DA permit or approving the mitigation banking instrument.

This section also lists the types of information to be provided in draft and final mitigation plans. Permittees proposing to use a mitigation bank to provide required compensatory mitigation would be required to submit only information concerning the mitigation bank they plan to use, project baseline information, and credit determinations.

We are seeking comment on the provisions in this section.

33 CFR 332.5 and 40 CFR 230.95 Ecological Performance Standards

This section discusses, in general terms, ecological performance standards that will be used to assess whether compensatory mitigation projects, including mitigation banks, are achieving their objectives. Since ecological performance standards usually vary by aquatic type and geographic region, this section provides only general considerations for establishing those standards.

We are seeking comment on the provisions in this section.

33 CFR 332.6 and 40 CFR 230.96 Monitoring

This proposed rule provides general standards for monitoring compensatory mitigation projects, including mitigation banks. Monitoring reports are used for assessing how well the compensatory mitigation project is satisfying its objectives. We are proposing a minimum required monitoring period of five years, with flexibility for district engineers to stop requiring monitoring reports if compensatory mitigation projects, such as those involving the establishment of open water habitats, meet their performance standards in a shorter period of time. Longer

monitoring periods may be required for compensatory mitigation activities, such as the establishment of forested wetlands, that develop slowly, or that require remediation.

We are seeking comment on the provisions in this section. We are also requesting comment on examples of specific types of compensatory mitigation projects (e.g., specific habitat types) where monitoring periods of less than five years may be appropriate.

33 CFR 332.7 and 40 CFR 230.97 Management

This section of the proposed rule establishes criteria and standards for the management of compensatory mitigation projects, including mitigation banks. Some compensatory mitigation projects may require active management and maintenance, as well as adaptive management. For some aquatic resources, such as fringe wetlands in coastal areas, long-term management may not be feasible or desirable because of the dynamic nature of the environment.

The various real estate or legal instruments that can be used to protect compensatory mitigation project sites may differ from state to state, or among other government jurisdictions. Therefore, we are not proposing detailed requirements for real estate instruments used for long-term protection of compensatory mitigation project sites. We believe those instruments are best addressed by district engineers on a case-by-case basis.

For compensatory mitigation projects on public lands, other long-term protection mechanisms may be more appropriate, such as Federal facility management plans or integrated natural resources management plans. Therefore, this section of the proposed rule has flexibility for district engineers to determine requirements for site protection on a case-by-case basis. The agencies recognize that changes in statute, regulation or agency needs or mission may sometimes necessitate authorization of an incompatible use on public lands originally set aside for compensatory mitigation. In such cases, the public agency authorizing the incompatible use would be responsible for providing alternative compensatory mitigation for any loss in functions resulting from the incompatible use.

Paragraph (c) of this section discusses remediation requirements if a compensatory mitigation project is not progressing towards meeting its performance standards. In addition to consulting with the responsible party to determine appropriate remediation requirements, the district engineer should also consult with any other Federal, Tribal, state, or local agency ''where appropriate.'' In general, such consultation would be appropriate if the other agency was involved earlier in the review of the compensatory mitigation requirements in the DA permit.

The proposed rule requires that the permit conditions or mitigation banking instrument identify the party responsible for the ownership and long-term management of the compensatory mitigation project. The permittee or mitigation bank sponsor must provide long-term financing as necessary to ensure that funds are available for the long-term management of the project site once the monitoring period is over. This can be accomplished in a number of ways, but in the past problems have arisen when arrangements for the capitalization of long-term management funds have not taken place in a timely fashion. Although the rule text does not address this deficiency, we are soliciting comments on the inclusion of a provision that would require that the arrangements for the adequate capitalization of long-term management funds be finalized prior to permit issuance.

If the entity responsible for long-term management is a government agency or public authority, and that entity is willing to accept the stewardship responsibilities for the compensatory mitigation project site, the district engineer may accept the stewardship commitment by the government agency or public authority in lieu of imposing long-term financing requirements in the DA permit or mitigation banking instrument. Such acceptance of stewardship responsibilities will generally involve a formal transaction of some type (e.g., transfer of title, designation as a protected area, etc). We are aware of situations where government agencies have accepted stewardship responsibilities without adequately considering long-term financial needs for the management of a site, and strongly encourage agencies to plan for such needs before accepting stewardship responsibilities. Such planning may include requiring a financial commitment from the original responsible party as a condition of accepting long-term stewardship responsibilities.

We are seeking comment on the provisions in this section.

33 CFR 332.8 and 40 CFR 230.98 Mitigation Banks

The proposed rule establishes criteria and standards for mitigation banks, including requirements and processes for the review, approval, and oversight of those banks. We are seeking comment on all provisions of this section, especially the timeframes and milestones for mitigation bank review and approval.

The proposed rule contains explicit requirements for the mitigation bank prospectus, and requires the district engineer to notify the sponsor within 15 days if the prospectus is incomplete. The proposed rule also has requirements for the content of mitigation banking instruments.

The district engineer is responsible for the review and approval of mitigation banks that are intended to be used to provide compensatory mitigation for DA permits, after seeking comment from the Interagency Review Team (IRT) and the public. The role of the IRT is to advise the district engineer on the establishment and management of mitigation banks. Representatives of the U.S Environmental Protection Agency, National Marine Fisheries Service, and U.S. Fish and Wildlife Service hold ex officio positions on the IRT. Beyond this, the district engineer determines the composition of the IRT. The IRT in the proposed rule replaces the Mitigation Bank Review Team (MBRT) in the 1995 mitigation banking guidance.

Each proposed mitigation bank will be subject to a public notice and comment process, regardless of whether a DA permit is required to construct or establish the mitigation bank. In the proposed rule, we are specifying formal procedures and timeframes for establishing mitigation banks, to provide more predictability and efficiency to the mitigation bank review and approval process.

In general, the timelines provided in this section of the proposed rule should result in a decision on the proposed mitigation bank within one year of receipt of a complete prospectus. However, there may be exceptional circumstances associated with a particular proposed mitigation bank that may result in a longer review period.

The district engineer, in consultation with the IRT and using a watershed approach to the extent practicable, will determine the service area of an approved mitigation bank. The service area of a mitigation bank is to be described in the mitigation banking instrument. The service area should be large enough to support an economically viable mitigation bank, but must not be larger than is appropriate to ensure that the aquatic resources provided by the mitigation bank will effectively compensate for adverse environmental impacts across the entire service area. In

§ 332.8(c)(5)(ii), we provide some guidelines for service areas based on the hydrologic unit codes designated by the U.S. Geological Survey. The service areas suggested in the text of this section may not be appropriate for some mitigation banks, such as single-user mitigation banks sponsored by state departments of transportation. For these sponsors, it may be infeasible to have relatively small service areas for their mitigation banks, such as those based on 8-digit hydrologic unit codes, because they incur a relatively small amount of debits per year. Also, having relatively small service areas for some single user mitigation banks may discourage the establishment of large mitigation banks that provide substantial amounts of habitat and other aquatic resource functions and services. On the other hand, in areas with significant development, service areas even smaller than an 8-digit hydrologic unit code may be appropriate.

We are proposing a dispute resolution process to resolve agency concerns about proposed mitigation banks. The dispute resolution process involves higher levels of review, up to the respective agency headquarters. We are seeking comment on the milestones and timeframes in the proposed dispute resolution process. It is intended as a last resort for significant issues that cannot be resolved in a timely manner within the IRT. The agencies anticipate that it will be used infrequently.

In cases where initial establishment of the mitigation bank requires authorization through a DA permit, it is important that the permit be fully consistent with the provisions of the mitigation banking instrument. Issuing the permit before all relevant provisions of the mitigation banking instrument have been substantively determined may lead to inconsistencies between the permit and the instrument and/or may constrain the district engineer's ability to address substantive concerns that arise through the IRT review process. Where issues potentially affecting permit conditions are still unresolved within the IRT, the district engineer should delay permit issuance until the final terms of the mitigation banking instrument have been determined.

We are proposing to establish a process for modifying mitigation banking instruments. For example, a mitigation banking instrument may be modified if the mitigation bank develops aquatic resource functions that are substantially greater than expected, to allow the sponsor to sell those extra credits after achieving all performance standards specified in the bank's instrument. The full IRT review process would be used for major modifications to the mitigation banking instrument, such as expanding the mitigation bank by conducting more aquatic resource restoration, establishment, enhancement, and/or preservation at the bank site. Certain types of minor modifications to instruments, such as changes in credit release schedules, may be accomplished through a streamlined modification process.

Umbrella mitigation banking instruments, which have been used to establish mitigation banks on multiple sites, are provided for in the proposed rule with additional sites treated as modifications of the original mitigation banking instruments. In the proposed rule, a mitigation banking instrument would have to be approved for the initial mitigation bank site, and subsequent mitigation bank sites under the ''umbrella'' instrument would be added to that instrument as major modifications.

The proposed rule also establishes criteria for credit release from mitigation banks. A limited proportion of projected credits may be released when the mitigation banking instrument and mitigation plan have been approved, the bank site secured, and required financial assurances have been established. The proposed rule also requires a substantial proportion of credits to be released only after performance standards are achieved. Criteria for determining the credit release schedule are provided in the text of the proposed rule. District engineers must also approve credit releases.

Existing mitigation banks may continue operating under the terms of their approved instruments. However, modifications to the instrument, including the addition of new sites for umbrella instruments, must be made in accordance with the requirements of Part 332. We are also seeking comment on the appropriate legal mechanism for transferring the responsibility for providing compensatory mitigation from the permittee to a mitigation bank. One option would be through parallel provisions in DA permit special conditions and mitigation banking instruments. Therefore, we are seeking comment on the following language for a special condition for a DA permit to transfer responsibility for providing compensatory mitigation in cases where credits are secured from a mitigation bank:

''You have agreed to provide compensatory mitigation for the permitted impacts by purchasing credits at [INSERT NAME OF MITIGATION BANK]. As compensation for impacting [INSERT NUMBER] acres [OR OTHER UNIT OF MEASURE] of [INSERT AQUATIC RESOURCE TYPE], a total of [INSERT NUMBER] credits must be acquired from the [INSERT NAME OF MITIGATION BANK]. Upon the mitigation bank sponsor's acceptance of payment for those credits, that compensatory mitigation requirement will be considered fulfilled, and your responsibility for providing that compensatory mitigation will be transferred to the [INSERT NAME OF MITIGATION BANK]. Proof of securing these compensatory mitigation credits must be provided to this office prior to initiating any work in waters of the United States on the project site, unless the district engineer waives this requirement. If you cannot obtain the required amount and type of credits from [INSERT NAME OF MITIGATION BANK], you must submit a revised compensatory mitigation proposal to this office, and receive approval of the revised compensatory mitigation plan, prior to initiating any work in waters of the United States.''

We are also seeking comment on the following language for a mitigation banking instrument, whereby the mitigation bank would then accept responsibility for providing compensatory mitigation for a DA permit in cases where the permittee secures credits from that mitigation bank sponsor:

''For projects in the service area of this Mitigation Bank that require Department of the Army authorization pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, and if such authorizations require compensatory mitigation, credits from this Mitigation Bank may be used to satisfy those compensatory mitigation requirements, subject to Corps approval on a case-by-case basis.

In accordance with the terms of this Instrument, the sponsor agrees that upon Corps approval of a proposal by the Permittee to secure mitigation bank credits through a contract with this Mitigation Bank, a fully executed contract between the Sponsor and the Permittee shall act to transfer to this Mitigation Bank all responsibility for the compensatory mitigation required by the permittee's DA permit.''

We are also seeking comment on other possible mechanisms for transferring legal responsibility for providing compensatory mitigation from the permittee to a mitigation bank. One potential mechanism may be co-permitting, where the mitigation bank sponsor would sign the DA permit and assume responsibility for providing compensatory mitigation credits, once the permittee has secured those credits from the mitigation bank. The compensatory mitigation provisions of the permit (and those provisions only) would then be directly enforceable against the mitigation bank sponsor using normal Clean Water Act enforcement authorities. The agencies seek comment on these and other mechanisms for transferring legal responsibility for providing

compensatory mitigation from the permittee to the mitigation bank sponsor.

In addition to the Corps, other Federal agencies (as well as some state agencies) have, in the past, signed mitigation banking instruments to indicate their agreement with the terms of those instruments. Since district engineers are responsible for approving instruments for mitigation banks, as well as for approving the use of credits from those banks as compensatory mitigation for specific DA permits, we are seeking comment on whether the provisions in § 332.8(b)(3) relating to other IRT members signing mitigation banking instruments are appropriate. In particular, do, or should, the signatures of other agencies have any legal effect in the implementation and enforcement of the banking instrument?

33 CFR 332.9 and 40 CFR 230.99 In-Lieu Fee Programs

Since we are proposing to require in-lieu fee programs after five years to comply with the same criteria, requirements, and standards as mitigation banks, we believe there is a need for a grandfathering provision for current in-lieu fee programs. We are seeking comments on this section, in particular the proposed time frames. Section VI below explains our rationale for phasing out in-lieu fee programs and discusses possible alternative approaches.

VI. In-Lieu Fee Programs/Arrangements

Under the proposed rule, existing in-lieu fee programs would have to be modified within five years to meet the requirements for mitigation banks in 33 CFR 332.8 and 40 CFR 230.98 in order to continue to provide compensatory mitigation credits for DA permits. In other words, after five years, in-lieu fee programs would cease to exist as a separate mechanism for providing compensatory mitigation. As of the effective date of the rule, new programs would have to meet the requirements in 33 CFR 332.8 and 40 CFR 230.98 in order to sell credits. Current in-lieu fee programs with multiple sites could develop umbrella mitigation banking instruments (see 33 CFR 332.8(g) and 40 CFR 230.98(g) of the proposed rule).

Under current practice, there are several important differences between in-lieu fee programs and mitigation banks. First, in-lieu fee programs are generally administered by state governments, local governments, or non-profit non-governmental organizations while mitigation banks are usually (though not always) operated for profit by private entities, at least those that are third-party mitigation providers. Second, in-lieu fee programs rely on collected fees from permittees to initiate compensatory mitigation projects while mitigation banks usually rely on private investment for initial financing. Most importantly, mitigation banks must achieve certain milestones, including site selection, plan approval, and financial assurances, before they can sell credits, and generally sell a majority of their credits only after the mitigation has been provided. In contrast, in-lieu fee programs generally provide mitigation only after collecting fees, and there is often a substantial time lag between permitted impacts and implementation of compensatory mitigation projects. In-lieu fee programs are also not generally required to provide the same financial assurances as mitigation banks. For all of these reasons, in some cases there may be greater uncertainty associated with in-lieu fee programs regarding the final mitigation and its adequacy to compensate for lost functions and services. On the other hand, some in-lieu fee programs have been able to protect high quality aquatic resources under threat of imminent impact, to employ a conservation strategy that is consistent with the watershed approach discussed in § 332.3(c) of the proposed rule, and to partner with government agencies and non-profit non-governmental organizations to maximize protection of those at-risk resources. In-lieu fee programs may also be able to provide effective compensatory mitigation in certain areas, such as coastal areas, where options for economically viable mitigation banks are limited.

The 2004 National Defense Authorization Act directs that, ''To the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation * * * and apply equivalent standards and criteria to each type of compensatory mitigation.'' The agencies carefully considered this directive in developing the proposed rule. Based on this consideration, the agencies believe that the proposed requirements for mitigation banks are necessary and sufficient to ensure that third-party compensatory mitigation is actually completed, while also balancing the need to make mitigation banking economically viable and thus ''maximize available credits.'' The agencies are concerned that providing less stringent oversight or up-front requirements for in-lieu fee programs may not ensure that compensatory mitigation is actually performed, or satisfy the statutory directive to apply equivalent standards and criteria to each type of mitigation to the maximum extent practicable. The agencies recognize that the proposed requirements for permittee-responsible mitigation are not exactly the same as those for mitigation banks, though we have tried to harmonize them to the extent practicable. But there are certain requirements, such as formal review by an IRT, that are not practicable for permittee-responsible projects, particularly smaller ones. However, for in-lieu fee programs, which as third-party mitigation providers sell credits to permittees and take on responsibility for providing required compensatory mitigation in the same way that mitigation banks do, we have not found strong grounds for concluding that meeting the same requirements as mitigation banks is not appropriate and practicable.

Another concern with in-lieu fee programs is the sale price of credits. Because credits are often sold before the details (or even the location) of a specific compensatory mitigation project have been determined, it may be difficult for the project sponsor to determine a price that will fully fund the future compensatory mitigation project. Because the market pressure of needing to provide a sufficient return to investors is missing, in-lieu fee sponsors may underestimate the credit price, and perhaps undercut a mitigation bank doing business in the same service area. Furthermore, it is difficult for the Corps to determine what an adequate price might be in the absence of definitive information about the location and type of mitigation project to be provided.

The agencies realize that phasing out in-lieu fee programs entails some challenges. In some areas, there are no mitigation banks and in-lieu fee programs provide the only option for third-party mitigation. However, the agencies are concerned that this may to some extent reflect the less stringent requirements under which in-lieu-fee programs currently operate. The agencies believe that if in-lieu fee programs are required to meet the same requirements as banks, this will provide a level playing field that will allow mitigation banks to compete in areas where this may not be currently possible. We also recognize that in areas with a ''thin'' market (e.g., areas where there is a low density of dredge and fill projects requiring compensatory mitigation) it may not be economically viable to obtain the level of up-front financing that is necessary to start a mitigation bank. This concern can be at

least partially addressed through the size of the mitigation bank's service area. Proposed § 332.8(5)(ii) provides that the service area ''should be large enough to support an economically viable mitigation bank, but must not be larger than is appropriate to ensure that the aquatic resources provided by the mitigation bank will effectively compensate for adverse environmental impacts across the entire service area.''

The agencies recognize that phasing out in-lieu fee programs would represent a substantial departure from current practice. We are aware that there are a number of successful in-lieu fee programs that are providing effective compensatory mitigation. We therefore request comment on the challenges associated with transforming these projects into mitigation banks over a five-year period. We also request comment on retaining in-lieu fee programs as a distinct regulatory entity. Under this approach, in-lieu fee programs would have equally specific, but somewhat different, requirements from mitigation banks. Areas in which in-lieu fee programs might be different include: (1) The degree of up-front planning required before credits could be sold (e.g., in-lieu fee programs might not be required to identify and secure a site and provide detailed site plans for the compensatory mitigation project); (2) the level of financial assurances that would be required, although we note that under the proposed rule district engineers retain substantial discretion in determining appropriate financial assurances for banks, and may consider factors such as the type of sponsoring entity (e.g., government, private, non-profit); (3) the types of projects for which they could be used (e.g., in-lieu fee programs might be limited to providing compensatory mitigation only for nationwide permits and other general permits, or for projects below a specified acreage cutoff, such as 1 acre); (4) the required compensation ratios (e.g., these could be higher for in-lieu fee programs than for mitigation banks); (5) the credit release schedule (e.g., in-lieu fee programs might be permitted to sell more credits at an earlier point in the planning process); (6) limiting the establishment and use of in-lieu fee programs to specific types of aquatic resources (e.g., tidal wetlands) or specific geographic regions, such as coastal areas; and (7) the types of permitted sponsoring entities (i.e., in-lieu fee programs might be limited to government agencies and/or non-profit land stewardship entities with proven track records). Commenters may suggest other ways in which the requirements for in-lieu fee programs might be different from those for mitigation banks.

Another option would be to retain in-lieu fee programs but provide a ''preference'' for in-place compensatory mitigation (e.g., compensatory mitigation sites such as mitigation banks established in advance of permitted impacts) over compensatory mitigation that would be established after permitted impacts are authorized (e.g., many in-lieu fee programs) because of their greater certainty of successfully providing compensatory mitigation credits. Under this approach, if the permitted project was in the service area of both an established mitigation bank and an in-lieu fee project that had not been constructed, the permittee would first have to consider purchasing credits from the mitigation bank, and could only use the in-lieu fee program if purchasing credits from the mitigation bank was not practicable.

Comments will be most helpful if they provide specific information. Current in-lieu fee program sponsors should explain exactly what difficulties they would experience in transitioning to a mitigation bank. Commenters who support retaining in-lieu fee programs as a distinct regulatory entity should explain exactly what requirements would be different from those for mitigation banks, and what would be the basis for establishing these different requirements in light of the statutory directive noted above. The agencies believe that the detailed discussion of issues and options in this preamble provides sufficient notice and opportunity for informed public comment, such that we may choose to finalize a rule that retains a separate in-lieu fee option along the lines discussed here without issuing a new proposed rule.

VII. Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps and EPA. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This proposed action will impose a new information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Applicants for Clean Water Act section 404 permits will be required, under 33 CFR 332.4(b)(1) and 40 CFR 230.93(b)(1) of the proposed rule, to submit a statement explaining how impacts associated with the proposed activity are to be avoided, minimized, and compensated for. This statement must also include a description of any proposed compensatory mitigation, or the intention to use an approved mitigation bank.

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 Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on April 30, 2008). As a result of the new information collection requirement in the proposed rule, we are proposing to modify our standard permit application form in accordance with the requirements of the Paperwork Reduction Act.

Title, Form, and OMB Number: Application for a Department of Army Permit; Eng Form 4345; OMB Control Number 0710–0003.

Type of Request: Revision.

Number of Respondents: 85,500.

Responses Per Respondent: 1.

Annual Responses: 85,500.

Average Burden Per Response: 11 hours.

Annual Burden Hours: 374,000.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that result in impacts to the aquatic environment and nearby properties, and to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State, local or tribal government.

Frequency: On occasion.

Respondents Obligation: Mandatory.

OMB Desk Officer: Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Jim Laity at the Office of Management and Budget, Desk Officer for USACE, Room 10202, New Executive Office Building, Washington, DC 20503.

Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is a ''significant regulatory action'' and the draft was submitted to OMB for review.

The regulatory analysis required by E.O. 12866 has been prepared for this proposed rule. The regulatory analysis is available on the Internet at: *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm*. It is also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps 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.'' The proposed rule does not have Federalism implications. We do not believe that the proposed rule will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose new substantive requirements. In addition, the proposed rule will not impose any additional substantive obligations on State or local governments. State and local governments that administer in-lieu fee programs to provide compensatory mitigation for impacts to wetlands and other aquatic resources can modify their in-lieu fee programs to conform with the requirements of this proposed rule. Therefore, Executive Order 13132 does not apply to this proposed rule. However, in the spirit of Executive Order 13132, we specifically request comment from state and local officials on the proposed rule.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statutory basis for the proposed rule is Section 314 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136), which is discussed above. After considering the economic impacts of the proposed rule on small entities, we certify that this action will not have a significant impact on a substantial number of small entities. Small entities subject to the proposed rule include those small entities that need to obtain DA permits pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

This rulemaking will not change compensatory mitigation requirements, or change the number of permitted activities that require compensatory mitigation. This rule further clarifies mitigation requirements established by Corps and EPA, and is generally consistent with current agency practices. Some provisions of the rule may result in increases in compliance costs, other provisions may result in decreases in compliance costs, but most of the provisions in the rule are expected to result in no changes in compliance costs. To the extent that it promotes mitigation banking, the rule may lower compensatory mitigation costs for small projects by making credits more widely available. Overall, we believe the proposed rule will result in no net change in compliance costs for permittees, including small entities that need to obtain DA permits. For a more detailed analysis of potential economic impacts of this rule, please see the regulatory analysis in the Environmental Assessment prepared for the proposed rule. We are interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

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

informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule is generally consistent with current agency practice and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

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

The proposed rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''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.''

The proposed rule does not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, 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. Therefore, Executive Order 13175 does not apply to this proposed rule. However, in the spirit of Executive Order 13175, we specifically request comment from Tribal officials on the proposed rule.

Environmental Documentation

The Corps has prepared a draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed rule. The draft EA and FONSI are available at: *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm*. It is also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

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

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

National Technology Transfer and Advancement Act

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), directs us to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through the Office of Management and Budget (OMB), explanations when the we decide not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the Corps and EPA did not consider the use of any new voluntary consensus standards.

List of Subjects

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 332

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Water resources, Watersheds, Waterways.

40 CFR Part 230

Environmental protection, Water pollution control.

Corps of Engineers

33 CFR Chapter II

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR chapter II as set forth below:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

1. The authority citation for part 325 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 325.1 by redesignating paragraphs (d)(7), (d)(8), and (d)(9) as paragraphs (d)(8), (d)(9), and (d)(10), respectively, and adding new paragraph (d)(7) as follows:

§ 325.1 Applications for permits.

* * * * *

(d) * * *

(7) For activities involving discharges of dredged or fill material into waters of the United States, the application must include a statement describing how impacts to waters of the United States are to be avoided, minimized, and compensated (see § 332.4(b)(1)).

* * * * *

PART 332—COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES

3. Add part 332 to read as follows:

PART 332—COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES

Sec.

332.1 Purpose and general considerations.
332.2 Definitions.
332.3 General compensatory mitigation requirements.
332.4 Planning and documentation.
332.5 Ecological performance standards.
332.6 Monitoring.
332.7 Management.
332.8 Mitigation banks.
332.9 In-lieu fee programs.

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; and Pub. L. 108–136.

§ 332.1 Purpose and general considerations.

(a) *Purpose.* (1) The purpose of this part is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of Department of the Army (DA) permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403). This part implements Section 314(b) of the 2004 National Defense Authorization Act (Pub. L. 108–136), which directs that the standards and criteria shall, to the maximum extent practicable, maximize available credits and opportunities for mitigation, provide for regional variations in wetland conditions, functions, and values, and apply equivalent standards and criteria to each type of compensatory mitigation. This part is intended to further clarify mitigation requirements established under U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency regulations at 33 CFR part 320 and 40 CFR part 230, respectively.

(2) These rules have been jointly developed by the Secretary of the Army, acting through the Chief of Engineers, and the Administrator of the Environmental Protection Agency. From time to time guidance on interpreting and implementing these rules may be prepared jointly by EPA and the U.S. Army Corps of Engineers at the national or regional level. No modifications to the basic application, meaning, or intent of these rules will be made without further joint rulemaking by the Secretary of the Army, acting through the Chief of Engineers and the Administrator of the Environmental Protection Agency pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(b) *Applicability.* This part does not alter the regulations at § 320.4(r) of this title, which address the general mitigation requirements for DA permits. In particular, it does not alter the circumstances under which compensatory mitigation is required or the definitions of ''waters of the United States'' or ''navigable waters of the United States,'' which are provided at parts 328 and 329 of this title, respectively. Use of resources as compensatory mitigation that are not otherwise subject to regulation under Section 404 of the Clean Water Act and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899 does not in and of itself make them subject to such regulation.

(c) *Sequencing.* Pursuant to these requirements, the district engineer will issue a section 404 permit only upon a determination that the permit applicant has taken all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that a section 404 activity complies with the Section 404(b)(1) Guidelines. Compensatory mitigation may also be required to ensure that an activity requiring authorization under Section 404 of the Clean Water Act and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899 is not contrary to the public interest.

(d) *Accounting for regional variations.* Where appropriate, district engineers shall account for regional characteristics of aquatic resource types, functions, services, and values when determining performance standards and monitoring requirements for compensatory mitigation projects.

§ 332.2 Definitions.

For the purposes of this part, the following terms are defined:

Adaptive management means the development of a management strategy that anticipates the challenges associated with likely future impacts to the aquatic resource functions of the mitigation site. It acknowledges the risk and uncertainty of compensatory mitigation projects and allows modification of those projects to optimize performance. The process will provide guidance on the selection of appropriate remedial measures that will ensure the continued adequate provision of aquatic resource function and involves analysis of monitoring results to identify potential problems of a compensatory project and identification of measures to rectify those problems.

Buffer means an upland and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Compensatory mitigation project means a restoration, establishment, enhancement, and/or preservation activity implemented by the permittee as a requirement of a DA permit (i.e.,

permittee-responsible mitigation), or by a third party (e.g., a mitigation bank).

Credit means a unit of measure (e.g., a functional or area measure) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of function is based on the aquatic resources restored, established, enhanced, or preserved.

DA means Department of the Army.

Days means calendar days.

Debit means a unit of measure (e.g., a functional or area measure) representing the loss of aquatic functions at an impact or project site. The measure of function is based on the aquatic resources impacted by the authorized activity.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation) means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland or deepwater site. Establishment results in a gain in aquatic resource area.

Functional capacity means the degree to which an area of aquatic resource performs a specific function.

Functions means the physical, chemical, and biological processes that occur in aquatic resources and other ecosystems.

Impact means adverse effect.

In-kind means a resource type that is structurally and/or functionally similar to the impacted resource type.

Interagency Review Team (IRT) means an interagency group of Federal, Tribal, State, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank.

Mitigation bank means a site, or suite of sites, where aquatic resources such as wetlands or streams are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for authorized impacts to similar resources. Third-party mitigation banks generally sell compensatory mitigation credits to permittees whose obligation to provide mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Mitigation banking instrument means the legal document for the establishment, operation, and use of a mitigation bank.

Off-site means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to or near the parcel containing the impact site.

On-site means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to or near the impact site.

Out-of-kind means a resource type that is structurally and/or functionally different than the impacted resource type.

Performance standards are observable or measurable attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Reference aquatic resources are aquatic resources that represent the range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riparian areas are lands adjacent to a waterbody. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas are adjacent to streams, lakes, and estuarine-marine shorelines and provide a variety of ecological functions and services and help improve or maintain local water quality.

Service area means the geographic area within which impacts can be mitigated at a particular mitigation bank, as designated in its instrument.

Services means the benefits that human populations receive from functions that occur in aquatic resources and other ecosystems.

Sponsor means any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

Standard permit means a standard, individual permit issued under the authority of Section 404 of the Clean Water Act and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899.

Values means the utility or satisfaction that humans derive from aquatic resource services. Values can be described in monetary terms or in qualitative terms, although many of the values associated with aquatic resources cannot be easily monetized. Values can be either use values (e.g., recreational enjoyment) or non-use values (e.g., stewardship, biodiversity).

Watershed plan means a plan developed by federal, tribal, state, and/or local government agencies, in consultation with relevant stakeholders. A watershed plan addresses ecological conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and watershed management plans.

§ 332.3 General compensatory mitigation requirements.

(a) *General considerations.* The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA permits. The district engineer must determine the

compensatory mitigation to be required in a DA permit, based on what is available, practicable, and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the economic costs of the compensatory mitigation. Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular DA permit. Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts.

(b) *Location and type of compensatory mitigation.* (1) Where project impacts are located within the service area of an approved mitigation bank, and the mitigation bank has credits available for the type of resource impacted, the project's compensatory mitigation requirements may be met by the purchase of an appropriate number of credits from the mitigation bank.

(2) Where practicable and appropriate, the district engineer will require that the location and aquatic resource type of permittee-responsible compensatory mitigation necessary to offset anticipated impacts be consistent with an established watershed plan or be determined using the principles of a watershed approach as outlined in paragraph (c) of this section. The district engineer and the IRT should also use a watershed approach to the extent practicable in reviewing mitigation banking instruments.

(3) Where reliance on a watershed plan or approach is not practicable, the district engineer will consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

(4) If, after considering opportunities for on-site, in-kind compensatory mitigation as provided in paragraph (b)(3) of this section, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted activity, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted activity, the district engineer shall require that this alternative compensatory mitigation be provided. In general, compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions, services, and values, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses.

(c) *Watershed approach to compensatory mitigation.* (1) The district engineer must use a watershed approach to establish compensatory mitigation requirements in DA permits to the extent appropriate and practicable. Where an applicable watershed plan is available, the watershed approach should be based on the existing plan. Where no such plan is available, the watershed approach should be based on information provided by the project sponsor or available from other sources. The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.

(2) *Considerations.* (i) A watershed approach to compensatory mitigation considers the importance of landscape position and resource type of compensatory mitigation projects for the ecological functions and sustainability of aquatic resources within the watershed. Such an approach considers how the types and locations of compensatory mitigation projects will provide the desired aquatic resource functions, and will continue to function over time in a changing landscape. It also considers the habitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed, such as storm water management or habitat conservation programs. It includes the protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed.

(ii) Locational factors (e.g., hydrology, surrounding land use) are important to the success of compensatory mitigation for impacted habitat functions and values and may lead to siting of such mitigation away from the project area. However, consideration should also be given to functions, services, and values (e.g., water quality, flood control, shoreline protection) that will likely need to be addressed at or near the areas impacted by the permitted project.

(iii) A watershed approach to compensatory mitigation may involve planning efforts to inventory historic and existing aquatic resources, including identification of degraded aquatic resources, and planning efforts to identify immediate and long-term aquatic resource needs within watersheds that can be met through permittee-responsible mitigation projects or mitigation banks. Watershed planning efforts may identify and/or prioritize aquatic resources that are important for maintaining and restoring ecological functions of the watershed.

(3) *Information Needs.* The use of a watershed approach is based on analysis of information regarding watershed conditions and needs. Such information includes: Current trends in habitat loss or conversion, cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species, site conditions that favor or hinder the success of mitigation projects, chronic environmental problems such as flooding or poor water quality, and local watershed goals and priorities. This information may be contained in an existing watershed plan or may be available from other sources. The level of information and analysis needed to support a watershed approach must be commensurate with the scope and scale of the proposed project requiring a DA permit, as well as the functions lost as a result of that project.

(d) *Site selection.* The compensatory mitigation project site must be ecologically suitable for providing the desired aquatic resource functions. In determining the ecological suitability of the compensatory mitigation project site, the district engineer must consider the following factors:

(1) Hydrological conditions, soil characteristics, and other physical and chemical characteristics;

(2) Watershed-scale features, such as aquatic habitat diversity, habitat connectivity, and other landscape scale functions;

(3) The size and location of the compensatory mitigation site relative to hydrologic sources (including the availability of water rights) and other ecological features;

(4) Compatibility with adjacent land uses and watershed management plans;

(5) Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources (e.g., shallow sub-tidal habitat, mature forests),

cultural sites, or habitat for Federally- or State-listed threatened and endangered species; and

(6) Other relevant factors including, but not limited to, development trends, anticipated land use changes, habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality goals, floodplain management goals, and the relative potential for chemical contamination of the aquatic resources.

(e) *Mitigation type.* (1) In general, in-kind mitigation is preferable to out-of-kind mitigation because it is most likely to compensate for the functions, services, and values lost at the impact site. For example, restoration of wetlands is most likely to compensate for unavoidable impacts to wetlands, while restoration of streams is most likely to compensate for unavoidable impacts to streams. Thus, except as provided in paragraph (e)(2) of this section, the district engineer should require that compensatory mitigation be of a similar type to the impacted aquatic resource.

(2) If the district engineer determines through the decision framework in paragraph (b) of this section that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed, the district engineer may authorize the use of such out-of-kind compensatory mitigation. Factors that should be considered in making this determination include historic loss of habitat types within the watershed, the needs of sensitive species, appropriate mixes of habitat to maintain ecosystem viability, the relative likelihood of success in establishing different habitat types, needs for ecosystem services, and local watershed goals and priorities. The basis for authorization of out-of-kind compensatory mitigation must be documented in the administrative record for the permit action.

(f) *Amount of compensatory mitigation.* The district engineer must require an amount of compensatory mitigation for unavoidable impacts to aquatic resources sufficient to replace lost aquatic resource functions. In cases where functional assessment methods are available, appropriate, and practical to use, district engineers should use those functional assessment methods to determine how much compensatory mitigation should be required. If a functional assessment is not used, a minimum one-to-one acreage or linear foot replacement ratio should be used as a surrogate for functional replacement. The district engineer must require a mitigation ratio greater than one-to-one where necessary to account for the method of compensatory mitigation (e.g., preservation), differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project, temporal losses of aquatic resource functions, and/or the difficulty of restoring or establishing the desired aquatic resource type and functions. The rationale for the required replacement ratio must be documented in the administrative record for the permit action.

(g) *Use of mitigation banks.* Mitigation banks may be used to compensate for impacts to aquatic resources authorized by general permits and individual permits, including after-the-fact permits.

(h) *Preservation.* (1) Preservation may be used to provide compensatory mitigation for activities authorized by DA permits where:

(i) The resources provide important physical, chemical, or biological functions for the watershed;

(ii) The resources contribute to the ecological sustainability of the watershed;

(iii) Preservation is determined by the district engineer to be appropriate and practicable;

(iv) The resources are under threat of destruction or adverse modifications; and

(v) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

(2) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach, as described in paragraph (c) of this section, but compensation ratios should be higher.

(i) *Buffers.* District engineers may require that compensatory mitigation project sites include, and may provide compensatory mitigation credit for, the establishment and maintenance of riparian areas and/or upland buffers around the restored, established, enhanced, or preserved aquatic resources where necessary to ensure the long-term viability of those resources.

(j) *Relationship to other Federal, Tribal, State, and local programs.* Compensatory mitigation projects for DA permits may also be used to compensate for environmental impacts authorized under other programs, such as Tribal, State, or local wetlands regulatory programs, the National Pollutant Discharge Elimination System Permit Program, Corps civil works projects, and Superfund removal and remedial actions, consistent with the terms and requirements of these programs and subject to the following considerations. The project must include appropriate compensatory mitigation for unavoidable impacts to aquatic resources authorized by the DA permit, over and above what would be required under other programs to address other impacts. Under no circumstances may the same credits be used to provide mitigation for more than one activity. However, where appropriate, compensatory mitigation projects, including mitigation banks, may be designed to holistically address requirements under multiple programs and authorities for the same activity. Except for projects undertaken by Federal agencies, or where Federal funding is specifically authorized to provide compensatory mitigation, Federally-funded wetland conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program and the Partners for Wildlife Program activities, cannot be used for the purpose of generating compensatory mitigation credits for activities authorized by DA permits. However, compensatory mitigation credits may be generated by activities undertaken in conjunction with, but supplemental to, such programs in order to maximize the overall ecological benefits of the conservation project.

(k) *Permit conditions.* The compensatory mitigation requirements for a DA permit, including the amount and type of compensatory mitigation, must be clearly stated in the special conditions of the individual permit or general permit verification (see 33 CFR 325.4 and 330.6(a)). The special conditions must be enforceable and describe the objectives of the compensatory mitigation project. The special conditions must also identify the party responsible for providing the compensatory mitigation. The special conditions must incorporate, by reference, compensatory mitigation plans approved by the district engineer. The performance standards and monitoring required for the compensatory mitigation project must also be clearly stated in the special conditions or the approved compensatory mitigation plan. The special conditions must also describe any required financial assurances or

long-term management provisions for the compensatory mitigation project. If a mitigation bank is used to provide the required compensatory mitigation, the special conditions must indicate which mitigation bank will be used, and specify the required number and type of credits the permittee is required to purchase.

(l) *Party responsible for compensatory mitigation.* (1) The special conditions of the DA permit must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

(2) For mitigation banks, the mitigation banking instrument must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

(3) If a mitigation bank is approved by the district engineer to provide required compensatory mitigation for a DA permit, the special conditions of that DA permit must indicate which mitigation bank will be used to provide that compensatory mitigation. In such cases, the mitigation bank assumes responsibility for providing the required compensatory mitigation after the permittee has secured those credits from the sponsor.

(m) *Timing.* Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the activity causing the authorized impacts. Where it is not practicable to complete the initial physical and biological improvements required by the approved mitigation plan by the first full growing season following the impacts resulting from the permitted activity, the district engineer may require additional compensatory mitigation to offset temporal losses of aquatic functions that will result from the permitted activity.

(n) *Financial assurances.* (1) The district engineer shall require sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with applicable performance standards. In cases where an alternate mechanism is available to ensure a high level of confidence that the compensatory mitigation will be provided and maintained (e.g., a formal, documented commitment from a government agency or public authority) the district engineer may determine that financial assurances are not necessary for that compensatory mitigation project.

(2) The amount of the required financial assurances must be determined by the district engineer, in consultation with the project sponsor, and must be based on the size and complexity of the compensatory mitigation project, the degree of completion of the project at the time of project approval, the likelihood of success, the past performance of the project sponsor, and any other factors the district engineer deems appropriate. Financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments, subject to the approval of the district engineer. The rationale for determining the amount of the required financial assurances must be documented in the administrative record for the DA permit.

(3) Financial assurances shall be phased out once the compensatory mitigation project has been determined by the district engineer to be successful in accordance with its performance standards. The DA permit or mitigation banking instrument must clearly specify the conditions under which the financial assurances are to be released to the permittee, sponsor, and/or other financial assurance provider, including, as appropriate, linkage to achievement of performance standards, adaptive management, or compliance with special conditions.

(o) *Compliance with applicable law.* The compensatory mitigation project must comply with all applicable Federal, state, and local laws. The DA permit or mitigation banking instrument must not require participation by the Corps or any other Federal agency in project management, including receipt or management of financial assurances or long-term financing mechanisms, except as determined by the Corps or other agency to be consistent with its statutory authority, mission, and priorities.

§ 332.4 Planning and documentation.

(a) *Pre-application consultations.* Potential applicants for standard permits are encouraged to participate in pre-application meetings with the Corps and appropriate agencies to discuss potential compensatory mitigation requirements and information needs.

(b) *Public review and comment.* (1) For an activity that requires a standard DA permit pursuant to Section 404 of the Clean Water Act, the public notice for the proposed activity must explain how impacts associated with the proposed activity are to be avoided, minimized, and compensated for. This explanation shall address the amount, type, and location of any proposed compensatory mitigation, including any out-of-kind mitigation, or indicate an intention to use an approved mitigation bank. The level of detail provided in the public notice must be commensurate with the scope and scale of the project.

(2) For activities authorized by general permits, review of compensatory mitigation plans must be conducted in accordance with the terms and conditions of those general permits and applicable regulations.

(c) *Mitigation plan.* (1) The permittee or mitigation bank sponsor must prepare a draft mitigation plan and submit it to the district engineer for review. After addressing any comments provided by the district engineer, the permittee or sponsor must prepare a final mitigation plan, which must be approved by the district engineer prior to issuing the DA permit or approving the mitigation banking instrument. The approved mitigation plan must be incorporated into the DA permit or mitigation banking instrument by reference. The mitigation plan must include the items described in paragraphs (c)(2) through (c)(14) of this section, except that the district engineer may waive specific items if he determines that they are not applicable to a particular project. Permittees who plan to fulfill their compensatory mitigation obligations by purchasing credits from an approved mitigation bank need only include the name of the mitigation bank and the items described in paragraphs (c)(5) and (c)(6) of this section in their mitigation plan. The level of detail of the mitigation plan should be commensurate with the scale and scope of the project.

(2) *Objectives.* A description of the aquatic resource type(s) and amount(s) that will be provided, the method of compensation (i.e., restoration, establishment, enhancement, and/or preservation), and the manner in which the aquatic resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, or other geographic area of interest.

(3) *Site selection.* A description of the factors considered during the site selection process. This should include consideration of watershed needs, on-site alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site.

(4) *Site protection instrument.* A description of the legal arrangements and instrument, including site ownership, that will be used to ensure

the long-term protection of the compensatory mitigation project site.

(5) *Baseline information.* A description of the ecological characteristics of the proposed compensatory mitigation project site and, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, and other site characteristics. A prospective permittee planning to purchase credits from an approved mitigation bank only needs to provide baseline information about the impact site, not the mitigation bank site.

(6) *Determination of credits.* A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project compensates for unavoidable impacts to aquatic resources resulting from the permitted activity. For mitigation banks, it should include a description of resource types for which the mitigation bank may be used as compensatory mitigation and the number of credits to be provided for each resource type. This may include provisions for adjusting credits in the future, both downward (if performance standards are not met) or upward (if performance standards are significantly exceeded). For permittees intending to purchase credits from an approved mitigation bank, it should include the number and type of credits to be purchased and how these were determined.

(7) *Mitigation work plan.* Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; plant species to be planted at the site; the use of natural regeneration or seed banks to provide the desired plant community at the site; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; erosion control measures; and proposed stream geomorphology, if applicable.

(8) *Maintenance plan.* A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

(9) *Performance standards.* Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.

(10) *Monitoring requirements.* A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.

(11) *Long-term management plan.* A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including the party responsible for long-term management and long-term financing mechanisms.

(12) *Adaptive management plan.* A description of procedures to address potential changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and conducting remediation to provide aquatic resource functions.

(13) *Financial assurances.* A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.

(14) *Other information.* The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the compensatory mitigation project.

§ 332.5 Ecological performance standards.

The mitigation plan must contain performance standards that will be used to assess whether the project is achieving its objectives. Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. Performance standards should be based on attributes that are objective, verifiable, and can be measured with a reasonable amount of effort. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.

§ 332.6 Monitoring.

(a) *General.* Monitoring the compensatory mitigation project site is necessary to determine if the project is meeting its performance standards, and to determine if remediation is necessary to ensure that the compensatory mitigation project is accomplishing its objectives. The district engineer must require the submission of monitoring reports to assess the development and condition of the compensatory mitigation project, unless he determines that monitoring is not practicable for that compensatory mitigation project. The mitigation plan must address the monitoring requirements for the compensatory mitigation project, including the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring, the frequency for submitting monitoring reports to the district engineer, and the party responsible for submitting those monitoring reports to the district engineer.

(b) *Monitoring period.* The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs). Following project implementation, the district engineer may waive the remaining monitoring requirements upon a determination that the compensatory mitigation project has achieved its performance standards. Conversely the district engineer may extend the original monitoring period upon a determination that performance standards have not been met or the compensatory mitigation project is not on track to meet them. The district engineer may also revise monitoring requirements when remediation is required.

(c) *Monitoring reports.* (1) The district engineer must determine the information to be included in monitoring reports. This information

should be sufficient for the district engineer to determine how the compensatory mitigation project is progressing towards meeting its performance standards, and may include plans, maps, and photographs to illustrate site conditions. Monitoring reports may also include the results of functional assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

(2) Monitoring reports should be provided by the district engineer to interested Federal, Tribal, State, and local resource agencies. The district engineer and representatives of Federal, Tribal, State, and/or local resource agencies may conduct regular (e.g., annual) on-site inspections, as appropriate, to monitor performance of the mitigation site. Monitoring reports must be made available to the public upon request.

§ 332.7 Management.

(a) *Site protection.* The aquatic habitats, riparian areas, buffers, and uplands that comprise the overall compensatory mitigation project should be provided long-term protection, through appropriate real estate instruments such as conservation easements held by, or transfer of title to, entities such as Federal, Tribal, State, or local resource agencies, non-profit conservation organizations, or private land managers, or other acceptable means for government property, such as Federal facility management plans or integrated natural resources management plans. The real estate instrument for the long-term protection of the compensatory mitigation site should restrict or prohibit incompatible uses (e.g., clear cutting) that might otherwise jeopardize the objectives of the compensatory mitigation project. Where appropriate, multiple instruments recognizing compatible uses (e.g., fishing or grazing rights) may be used.

(b) *Sustainability.* Compensatory mitigation projects should be designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. This includes minimization of active engineering features (e.g., pumps) and appropriate siting to ensure that natural hydrology and landscape context will support long-term sustainability. Where active long-term management and maintenance are necessary to ensure long-term sustainability (e.g., prescribed burning, invasive species control, maintenance of water control structures, easement enforcement), the responsible party must provide for such management and maintenance. This includes the provision of long-term financing mechanisms where necessary.

(c) *Adaptive management.* (1) If monitoring or other information indicates that the compensatory mitigation project is not progressing towards meeting its performance standards as anticipated, the responsible party must notify the district engineer. The district engineer must require remediation to correct the deficiencies in the project to the extent appropriate and practicable. In determining appropriate and practicable remediation, the district engineer will consider whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the compensatory mitigation project.

(2) The district engineer, in consultation with the responsible party (and other Federal, Tribal, state, and local agencies, as appropriate), will determine the appropriate remediation requirements. The required remediation may include site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The remediation must be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives.

(3) The performance standards must be revised where necessary to assess the success of remediation efforts and/or the realization of comparable ecological benefits that were considered in determining remediation requirements.

(d) *Long-term management.* (1) The permit conditions or mitigation banking instrument must identify the party responsible for the ownership and long-term management of the compensatory mitigation project, once performance standards have been achieved. The permit conditions or mitigation banking instrument may contain provisions allowing the permittee or sponsor to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the district engineer. The land stewardship entity need not be identified in the original permit or mitigation banking instrument, as long as the future transfer of long-term management responsibility is approved by the district engineer.

(2) Provisions necessary for long-term financing must be included in the original permit or mitigation banking instrument. Appropriate long-term financing mechanisms include endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, a formal commitment to accept stewardship responsibilities for the project is acceptable in lieu of specific financial arrangements.

§ 332.8 Mitigation banks.

(a) *General considerations.* (1) All mitigation banks must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits. To the maximum extent practicable, mitigation banks must be planned and designed to be self-sustaining over time, but some active management and maintenance may be required to ensure their long-term viability and sustainability. Examples of acceptable management activities include maintaining fire dependent habitat communities in the absence of natural fire and controlling invasive exotic plant species.

(2) Mitigation banks may be sited on public or private lands. Siting on public land is only permitted when done in accordance with the mission and policies of the land management agency and with its written approval. Credits for mitigation banks on public land must be based solely on aquatic resource functions provided by the mitigation bank, over and above those provided by public programs already planned or in place.

(3) All mitigation banks must comply with the standards in this part, if they are to be used to provide compensatory mitigation for activities authorized by DA permits, regardless of whether they are sited on public or private lands and whether the sponsor is a governmental or private entity.

(b) *Interagency Review Team.* (1) The district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of the mitigation bank. The district engineer or his designated representative serves as Chair of the IRT. In cases where a mitigation bank is proposed to satisfy the requirements of another Federal, Tribal, State, or local program, in addition to compensatory mitigation requirements of DA permits, the district engineer may designate an appropriate official of the responsible agency as co-Chair of the IRT.

(2) In addition to the Corps, representatives from the U.S. Environmental Protection Agency, U.S.

Fish and Wildlife Service, NOAA Fisheries, the Natural Resources Conservation Service, and other Federal agencies, as appropriate, may participate in the IRT. The IRT may also include representatives from Tribal, State, and local regulatory and resource agencies, where such agencies have authorities and/or mandates directly affecting, or affected by, the establishment, operation, or use of the mitigation bank. The district engineer will seek to include all public agencies with a substantive interest in the establishment of the mitigation bank on the IRT, but retains final authority over its composition.

(3) The primary role of the IRT is to facilitate the establishment of mitigation banks through the development of mitigation banking instruments. The IRT will review the prospectus, mitigation plan, and mitigation banking instrument and provide comments to the district engineer. Members of the IRT may also sign the mitigation banking instrument, if they so choose. By signing the mitigation banking instrument, the IRT members indicate their agreement with the terms of the instrument. The IRT will also advise the district engineer in assessing monitoring reports, recommending remedial measures, approving credit release, and approving modifications to a mitigation banking instrument.

(4) The district engineer will give full consideration to the comments and advice of the IRT. However, the district engineer alone retains final authority for approval of the mitigation banking instrument. However, in cases where the mitigation bank is also intended to satisfy the requirements of another agency, that agency must also approve the mitigation banking instrument before it can be used to satisfy such requirements.

(c) *Review process.* (1) The sponsor is responsible for preparing all documentation associated with establishment of the mitigation bank, including the prospectus, mitigation plan, and mitigation banking instrument. The prospectus provides an overview of the mitigation bank project and serves as the basis for public and initial IRT comment. The mitigation plan, as described in § 332.4(c), provides detailed plans and specifications for the mitigation bank. The mitigation banking instrument provides the authorization for the mitigation bank to provide credits to be used as compensatory mitigation for DA permits. The mitigation banking instrument must also incorporate the mitigation plan by reference.

(2) *Prospectus.* The prospectus must provide a summary of the information that will be included in the mitigation plan, at a sufficient level of detail to support informed public and IRT comment. In particular, it must describe the objectives of the proposed mitigation bank, how the mitigation bank will be established and operated, the proposed service area, and the general need for, and technical feasibility of, the proposed mitigation bank. The prospectus must discuss the ecological suitability of the site to achieve the objectives of the proposed mitigation bank. This includes the physical, chemical, and biological characteristics of the site and how that site will support the planned types of aquatic resources and functions. It should also discuss the proposed ownership arrangements and long-term management of the mitigation bank. The review process begins when the sponsor submits a complete prospectus to the district engineer. The district engineer will notify the sponsor within 15 days whether or not a submitted prospectus is complete.

(3) *Preliminary review of prospectus.* Prior to submitting a prospectus, the sponsor may elect to submit a draft prospectus to the district engineer for comment and consultation. The district engineer will provide copies of the draft prospectus to the IRT, and provide comments back to the sponsor within 30 days. Any comments from IRT members will also be forwarded to the sponsor. This preliminary review is optional but is strongly recommended. It is intended to identify potential issues early so that the sponsor may attempt to address those issues prior to the start of the formal review process.

(4) *Public review and comment.* Within 30 days of receipt of a complete prospectus, the district engineer will provide public notice of the proposed mitigation bank, in accordance with the public notice procedures at 33 CFR 325.3. The public notice must include a summary of the prospectus and indicate that the full prospectus is available to the public for review upon request. The comment period for public notice will generally be 30 days, unless the district engineer determines that a longer or shorter comment period is appropriate. The district engineer will notify the sponsor if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary. Copies of all comments received in response to the public notice must be distributed to the other IRT members and to the sponsor within 15 days of the close of the public comment period. The district engineer and IRT members may also provide comments to the sponsor at this time, and copies of any such comments will also be distributed to all IRT members. If the construction of a mitigation bank requires DA authorization through the standard permit process, the public notice requirement may be satisfied through the public notice provisions of the standard permit processing procedures, provided all of the relevant information is provided.

(5) *Draft mitigation banking instrument.* After considering comments from the district engineer, the IRT, and the public, if the sponsor chooses to proceed with establishment of the mitigation bank, he must prepare a draft mitigation banking instrument and submit it to the district engineer. The draft mitigation banking instrument should be based on the prospectus and must describe in detail the physical and legal characteristics of the mitigation bank and how it will be established and operated. The draft mitigation banking instrument must include the following information:

(i) *Mitigation plan,* including all applicable items listed in § 332.4(c)(2) through (14);

(ii) *Geographic service area of the mitigation bank.* The service area is the watershed or other geographic area within which a mitigation bank is authorized to provide compensation for unavoidable impacts authorized by DA permits. The service area should be large enough to support an economically viable mitigation bank, but must not be larger than is appropriate to ensure that the aquatic resources provided by the mitigation bank will effectively compensate for adverse environmental impacts across the entire service area. The district engineer must consider relevant environmental and economic factors when approving the service area. The district engineer may also consider locally-developed standards and criteria. In urban areas, a U.S. Geological Survey 8-digit hydrologic unit code (HUC) watershed or a smaller watershed may be an appropriate service area. In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area for the mitigation bank. The basis for determining the service area must be documented in writing and referenced in the mitigation banking instrument;

(iii) *Credit release schedule.* Credit release must be tied to achievement of specific milestones. If the mitigation bank does not achieve appropriate milestones (e.g., performance standards) as anticipated, the district engineer may

modify the credit release schedule, including reducing the number of available credits or suspending credit sales altogether;

(iv) Accounting procedures;

(v) A provision stating that legal responsibility for providing the compensatory mitigation lies with the sponsor;

(vi) Default and closure provisions; and

(vii) Any other information deemed necessary by the district engineer.

(6) *IRT review.* Upon receiving a draft mitigation banking instrument, the district engineer must provide copies of the draft instrument to the IRT members for a 30-day comment period. Following the comment period, the district engineer will discuss any comments with the appropriate agencies and with the sponsor. The district engineer will seek to resolve any issues using a consensus-based approach. Within 90 days of receipt of the complete draft mitigation banking instrument, the district engineer must notify the sponsor of the status of the IRT review. Specifically, the district engineer must indicate to the sponsor if the draft mitigation banking instrument is generally acceptable and what changes, if any, are needed. If there are significant unresolved concerns that may lead to a formal objection from one or more IRT members to the final mitigation banking instrument, the district engineer will indicate the nature of those concerns.

(7) *Final mitigation banking instrument.* If the sponsor still wishes to proceed with establishment of the mitigation bank, he must submit a final mitigation banking instrument to the district engineer for approval. The final mitigation banking instrument should address any comments provided as a result of the IRT review process. The final mitigation banking instrument must be provided directly by the sponsor to all members of the IRT. Within 15 days of receipt of the final mitigation banking instrument, the district engineer will notify the IRT members whether or not he intends to approve the mitigation banking instrument. If no IRT member objects, by initiating the dispute resolution process in paragraph (d) of this section within 30 days of receipt of the final mitigation banking instrument, the district engineer will notify the sponsor of his final decision and, if the mitigation banking instrument is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the mitigation banking instrument is approved, arrange for it to be signed by the appropriate parties. The final mitigation banking instrument must contain the types of information items listed in paragraphs (c)(5)(i) through (vii) of this section.

(d) *Dispute resolution process.* (1) Within 15 days of receipt of the district engineer's notification of intent to approve a mitigation banking instrument, the Regional Administrator of the U.S. EPA, the Regional Director of the U.S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service, and/or other senior officials of agencies represented on the IRT may notify the district engineer and other IRT members by letter if they object to the approval of the proposed final mitigation banking instrument. This letter must include an explanation of the basis for the objection and, where feasible, offer recommendations for resolving the objections. If the district engineer does not receive any objections within this time period, he may proceed to final action on the mitigation banking instrument.

(2) The district engineer must respond to the objection within 30 days of receipt of the letter. The district engineer's response may indicate an intent to disapprove the mitigation banking instrument as a result of the objection, an intent to approve the mitigation banking instrument despite the objection, or may provide a modified mitigation banking instrument that attempts to address the objection. The district engineer's response must be provided to all IRT members.

(3) Within 15 days of receipt of the district engineer's response, if the Regional Administrator or Regional Director is not satisfied with the response he may forward the issue to the Assistant Administrator, Office of Water of the U.S. EPA, the Assistant Secretary for Fish and Wildlife and Parks of the U.S. FWS, or the Undersecretary for Oceans and Atmosphere of NOAA, as appropriate, for review and must notify the district engineer by faxed letter (with copies to all IRT members) that the issue has been forwarded for Headquarters review. This step is available only to the IRT members representing these three Federal agencies, however other IRT members who do not agree with the district engineer's final decision do not have to sign the mitigation banking instrument or recognize the mitigation bank for purposes of their own programs and authorities. If an IRT member other than the one filing the original objection has a new objection based on the district engineer's response, he may use the first step in this procedure (paragraph (d)(1) of this section) to provide that objection to the district engineer.

(4) If the issue has not been forwarded to the objecting agency's Headquarters, then the district engineer may proceed with final action on the mitigation banking instrument. If the issue has been forwarded to the objecting agency's Headquarters, the district engineer must hold in abeyance the final action on the mitigation banking instrument, pending Headquarters level review described below.

(5) Within 20 days from the date of the letter requesting Headquarters level review, the Assistant Administrator, Office of Water, the Assistant Secretary for Fish and Wildlife and Parks, or the Undersecretary for Oceans and Atmosphere must either notify the Assistant Secretary of the Army (Civil Works) (ASA(CW)) that further review will not be requested, or request that the ASA(CW) review the draft mitigation banking instrument.

(6) Within 30 days of receipt of the letter from the objecting agency's Headquarters request for ASA(CW)'s review of the draft mitigation banking instrument, the ASA(CW), through the Director of Civil Works, must review the draft mitigation banking instrument and advise the district engineer on how to proceed with final action on that instrument. The ASA(CW) must immediately notify the Assistant Administrator, Office of Water, the Assistant Secretary for Fish and Wildlife and Parks, and/or the Undersecretary for Oceans and Atmosphere of the final decision.

(7) In cases where the dispute resolution procedure is used, the district engineer must notify the sponsor of his final decision within 150 days of receipt of the final mitigation banking instrument.

(e) *Extension of deadlines.* (1) The deadlines in paragraphs (c) and (d) of this section may be extended by the district engineer at his sole discretion in cases where:

(i) Compliance with other applicable laws, such as Endangered Species Act Section 7 consultation, is required;

(ii) Timely submittal of information necessary for the review of the proposed mitigation bank is not accomplished by the sponsor; or

(iii) Information that is essential to the district engineer's response cannot be reasonably obtained within the specified time frame.

(2) In such cases, the district engineer must promptly notify the sponsor in writing of the extension and the reason for it. Such extensions shall be for the minimum time necessary to resolve the issue necessitating the extension.

(f) *Modification of mitigation banking instruments.* (1) In general, modification of an approved mitigation banking instrument must follow the procedures in paragraph (c) of this section, unless the district engineer determines that the streamlined review process described in paragraph (f)(2) of this section is warranted. The streamlined review process may be used for changes reflecting adaptive management of the mitigation bank, changes in credit release schedules, and changes that the district engineer determines are non-significant.

(2) If the district engineer determines that the streamlined review process is warranted, he must notify the IRT members and the sponsor of this determination and provide them with copies of the proposed modification. IRT members and the sponsor have 30 days to notify the district engineer if they have concerns with the proposed modification. If IRT members or the sponsor notify the district engineer of such concerns, the district engineer shall attempt to resolve those concerns. Within 60 days of providing the proposed modification to the IRT, the district engineer must notify the IRT members of his intent to approve or disapprove the proposed modification. If no IRT member objects, by initiating the dispute resolution process in paragraph (d) of this section, within 15 days of receipt of this notification, the district engineer will notify the sponsor of his final decision and, if the modification is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will so notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the modification is approved, arrange for it to be signed by the appropriate parties.

(g) *Umbrella mitigation banking instruments.* A single mitigation banking instrument may provide for future authorization of additional mitigation bank sites. As additional sites are selected, they must be included in the mitigation banking instrument as modifications, using the procedures in paragraph (c) of this section.

(h) *Coordination of mitigation banking instrument and DA permit issuance.* In cases where initial establishment of the mitigation bank involves activities requiring DA authorization, the permit should not be issued until all relevant provisions of the mitigation banking instrument have been substantively determined. This is to ensure that the DA permit accurately reflects all relevant provisions of the final mitigation banking instrument.

(i) *Project implementation.* Authorization to sell credits to satisfy compensatory mitigation requirements in DA permits is contingent on compliance with all of the terms of the mitigation banking instrument. This includes constructing a mitigation bank in accordance with the mitigation plan as approved by the district engineer and incorporated by reference in the mitigation banking instrument. If the aquatic resource restoration, establishment, enhancement, and/or preservation activities cannot be implemented in accordance with the approved mitigation plan, the district engineer must consult with the sponsor and the IRT to consider modifications to the mitigation banking instrument, including adaptive management, revisions to the credit release schedule, and alternatives for providing compensatory mitigation to satisfy any credits that have already been sold.

(j) *Credit withdrawal from mitigation banks.* The mitigation banking instrument may allow for initial debiting of a percentage of the total credits projected at mitigation bank maturity provided the following conditions are satisfied: the mitigation banking instrument and mitigation plan have been approved, the mitigation bank site has been secured, appropriate financial assurances have been established, and any other requirements determined to be necessary by the district engineer have been fulfilled. The mitigation banking instrument must provide a schedule for additional credit releases as appropriate milestones are achieved (see paragraph (k)(7) of this section).

(k) *Determining credits.* (1) *Units of measure.* For mitigation banks, the principal units for credits and debits are acres or linear feet or functional assessment units of particular resource types. Functional assessment units may be linked to acres or linear feet.

(2) *Functional assessment.* Where practicable, an appropriate functional assessment method (e.g., hydrogeomorphic approach to wetlands functional assessment) must be used to assess and describe the aquatic resource types that will be restored, established, enhanced and/or preserved by the mitigation bank.

(3) *Credit production.* The number of credits must reflect the difference between pre- and post-mitigation bank site conditions. If an existing resource is being enhanced, the number of credits should reflect only the enhancements produced by construction of the mitigation bank. This may be reflected in a discounted number of credits relative to the total acres or linear feet encompassed by the mitigation bank.

(4) *Credit value.* Once a credit is debited, its value cannot change.

(5) *Credits provided by preservation.* These credits should be specified as acres or linear feet of preservation of a particular resource types. In determining the compensatory mitigation requirements for DA permits using the mitigation bank, the district engineer should apply a higher mitigation ratio if the requirements are to be met through the use of preservation credits. In determining this higher ratio, the district engineer must consider the relative importance of both the impacted and the preserved aquatic resources in sustaining watershed functions as described in § 332.3(c).

(6) *Credits provided by riparian areas, buffers, and uplands.* These credits should be specified as acres or linear feet of riparian area, buffer, and uplands respectively. Non-aquatic resources can only be used as compensatory mitigation for impacts to aquatic resources authorized by DA permits when those resources are essential to maintaining the ecological viability of adjoining aquatic resources. In determining the compensatory mitigation requirements for DA permits using the mitigation bank, the district engineer may authorize the use of riparian area, buffer and/or upland credits if he determines that these areas are essential to sustaining watershed functions as described in § 332.3(c) and are the most appropriate compensation for the authorized impacts.

(7) *Credit release schedule.* The terms of the credit release schedule must be specified in the mitigation banking instrument. The credit release schedule may provide for release of a limited portion of projected credits once the mitigation banking instrument, including the mitigation plan, has been approved, the site secured, and appropriate financial assurances established. Release of the remaining credits must be tied to performance based milestones (e.g., construction, planting, establishment of specified plant and animal communities). The credit release schedule should reserve a significant share of the total credits for release only after full achievement of ecological performance standards. When determining the credit release schedule, factors to be considered may include,

but are not limited to: The method of providing compensatory mitigation credits (e.g., restoration), the likelihood of success, the nature and amount of work needed to generate the mitigation bank credits, the aquatic resource type(s) and function(s) to be provided by the mitigation bank, and the initial capital costs needed to establish the mitigation bank. Once released, credits may only be used to satisfy compensatory mitigation requirements in a DA permit if they have been specifically approved by the district engineer as part of the permit review process.

(8) *Release of credits.* Credit releases must be approved by the district engineer. The sponsor must submit documentation to the district engineer demonstrating that the appropriate milestones for a release of credits have been achieved and requesting the release. The district engineer will provide copies of this documentation to the IRT members for review. IRT members must provide any comments to the district engineer within 15 days of receiving this documentation. However, if the district engineer determines that a site visit is necessary, IRT members must provide any comments to the district engineer within 30 days of receipt of this documentation. After full consideration of any comments received, the district engineer will determine whether the milestones have been achieved and the credits can be released.

(9) *Adjustments to credit totals and release schedules.* (i) If, after achieving all performance standards as specified in the mitigation banking instrument, the sponsor finds that the mitigation bank has developed aquatic resource functions substantially in excess of those upon which the original credit totals and release schedule were based, he may request that the mitigation banking instrument be amended in accordance with the procedures in paragraph (f) of this section. This request must include detailed documentation of the aquatic resource functions provided by the mitigation bank site, an explanation of how those aquatic resource functions substantially exceed the functions upon which the original credit totals were based, an explanation of the basis for calculating the additional credits, and any other information deemed necessary by the district engineer.

(ii) If the district engineer determines that the mitigation bank is not meeting performance standards, he may reduce the number of available credits or suspend credit sales. The district engineer may also require adaptive management and/or direct the use of financial assurances for remediation.

(l) *Reporting.* (1) *Ledger account.* The mitigation banking instrument must contain a provision requiring the sponsor to establish and maintain a ledger to account for all credit transactions for the mitigation bank. Each time an approved credit transaction occurs, the sponsor must notify the district engineer. The sponsor must compile an annual ledger report showing the beginning and ending balance of available credits of each resource type, all additions and subtractions of credits, and any other changes in credit availability (e.g., additional credits released, credit sales suspended). The ledger report must be submitted to the district engineer, who will distribute copies to the IRT members. The ledger report is part of the administrative record for the mitigation bank. The district engineer will make the ledger report available to the public upon request.

(2) *Monitoring reports.* The sponsor is responsible for monitoring the mitigation bank site in accordance with the approved monitoring requirements to determine the level of success and identify problems requiring remedial action. Monitoring must be conducted in accordance with the requirements in § 332.6, and at time intervals appropriate for the particular project type and until such time that the district engineer, in consultation with the IRT, has determined that the performance standards have been attained. The mitigation banking instrument must include requirements for periodic monitoring reports to be submitted to the district engineer, who will provide copies to other IRT members.

(m) *Use of credits.* All activities authorized by DA permits are eligible, at the discretion of the district engineer, to use a mitigation bank to compensate for unavoidable impacts to aquatic resources, such as streams and wetlands. The district engineer will determine the number and type(s) of credits required to compensate for the authorized impacts. Permit applicants may propose to use a particular mitigation bank to provide the required compensatory mitigation. The banker must provide the permit applicant with a statement of credit availability. The district engineer must review the permit applicant's compensatory mitigation proposal, and notify the applicant of his determination regarding the acceptability of using that mitigation bank. In making this determination, the district engineer must fully consider agency and public comments submitted as part of the permit review process. Use of an approved mitigation bank consistent with the terms of its instrument (e.g., the permitted activity is located within the approved service area, credits are available for an appropriate resource type) will generally satisfy the requirement to use a watershed approach to determine compensatory mitigation requirements where feasible and considering opportunities for on-site, in-kind mitigation, as described in § 332.3(b).

(n) *IRT concerns with use of credits.* If, in the view of a member of the IRT, an issued permit or series of issued permits raises concerns about how credits from a particular mitigation bank are being used to satisfy compensatory mitigation requirements (including concerns about whether credit use is consistent with the terms of the mitigation banking instrument), the IRT member may notify the district engineer in writing of the concern and request an IRT consultation. The district engineer shall promptly consult with the IRT to address the concern. Final resolution of the concern is at the discretion of the district engineer, consistent with applicable statutes, regulations, and policies regarding compensatory mitigation requirements for DA permits.

(o) *Long-term management.* The legal mechanisms and the party responsible for the long-term management of the mitigation bank and the protection of the site must be documented in the mitigation banking instrument. The sponsor must make adequate provisions for the operation, maintenance, and long-term management of the mitigation bank site. The mitigation banking instrument may contain provisions for the sponsor to transfer long-term management responsibilities to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager. Where needed, the acquisition and protection of water rights must be secured by the sponsor and documented in the mitigation banking instrument.

(p) *Grandfathering of existing mitigation banking instruments.* All mitigation banking instruments approved after [date 90 days after publication of final rule] must meet the requirements of this part. Mitigation banks approved prior to [date 90 days after publication of final rule] may continue to operate under the terms of their existing instruments. However, any modification to such a mitigation banking instrument after [date 90 days after publication of final rule], including authorization of additional sites under an umbrella mitigation banking instrument, must be consistent with the terms of this part.

§ 332.9 In-lieu fee programs.

(a) *Suspension of future authorizations.* As of [date 90 days after publication of final rule] district engineers will not authorize new in-lieu fee programs to provide compensatory mitigation for DA permits.

(b) *Transition period for existing in-lieu fee programs.* (1) In-lieu fee programs with an approved instrument in effect as of [date 90 days after publication of final rule] may continue to sell credits consistent with the terms of that instrument until [date 5 years and 90 days after publication of final rule]. Credits that have already been sold by the in-lieu fee program on or before this date (or the date resulting from an extended deadline, as provided in paragraph (b)(2) of this section) continue to be subject to the terms and conditions of the instrument for that in-lieu fee program.

(2) In-lieu fee programs that wish to continue operating beyond this date must reconstitute themselves as a mitigation bank, consistent with the requirements of this part. If an in-lieu fee program has submitted a prospectus satisfying the requirements of § 332.8(c)(2) by [date 4 years and 90 days after publication of final rule] and is making a good faith effort to complete the process of obtaining an approved mitigation banking instrument that satisfies the requirements of this part, the district engineer may extend the deadline for final approval of this instrument beyond [date 5 years and 90 days after publication of final rule] as necessary.

(3) If the district engineer determines that the substantive requirements of this part pertaining to mitigation banks are already satisfied by the existing in-lieu fee program instrument, any changes necessary to reconstitute the in-lieu fee program as a mitigation bank may be accomplished using the streamlined review process in § 332.8(f)(2), otherwise a new mitigation banking instrument must be developed using the procedure in § 332.8(c).

(4) Any in-lieu fee program that has not reconstituted itself as a mitigation bank by the applicable deadline in paragraphs (b)(1) or (b)(2) of this section must cease selling credits as of that date. However, any such in-lieu fee program is still responsible for providing all credits already sold, consistent with the terms of its instrument.

Dated: March 13, 2006.

John Paul Woodley, Jr.,

Assistant Secretary of the Army (Civil Works), Department of the Army.

Environmental Protection Agency

40 CFR Chapter I

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 230 as set forth below:

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: Secs. 404(b) and 501(a) of the Clean Water Act of 1977 (33 U.S.C. 1344(b) and 1361(a)).

§ 230.12 [Amended]

2. In § 230.12(a)(2) revise the reference ''subpart H'' to read ''subparts H and J''.

Subpart H—[Amended]

3. In subpart H the Note following the subpart heading is amended by adding a sentence to the end to read as follows:

Note: * * * Additional criteria for compensation measures are provided in Subpart J.

4. In § 230.75 add a new sentence after the second sentence in paragraph (d) to read as follows:

§ 230.75 Actions affecting plant and animal populations

* * * * *

(d) * * * Additional criteria for compensation measures are provided in Subpart J. * * *

* * * * *

5. Add Subpart J to part 230 to read as follows:

Subpart J—Compensatory Mitigation for Losses of Aquatic Resources

Sec.

230.91 Purpose and general considerations.
230.92 Definitions.
230.93 General compensatory mitigation requirements.
230.94 Planning and documentation.
230.95 Ecological performance standards.
230.96 Monitoring.
230.97 Management.
230.98 Mitigation banks.
230.99 In-lieu fee programs.

Subpart J—Compensatory Mitigation for Losses of Aquatic Resources

§ 230.91 Purpose and general considerations.

(a) *Purpose.* (1) The purpose of this subpart is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of permits by the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). This subpart implements Section 314(b) of the 2004 National Defense Authorization Act (Pub. L. 108–136), which directs that the standards and criteria shall, to the maximum extent practicable, maximize available credits and opportunities for mitigation, provide for regional variations in wetland conditions, functions, and values, and apply equivalent standards and criteria to each type of compensatory mitigation. This subpart is intended to further clarify mitigation requirements established under Corps and EPA regulations at 33 CFR part 320 and this part, respectively.

(2) These rules have been jointly developed by the Secretary of the Army, acting through the Chief of Engineers, and the Administrator of the Environmental Protection Agency. From time to time guidance on interpreting and implementing these rules may be prepared jointly by EPA and the U.S. Army Corps of Engineers at the national or regional level. No modifications to the basic application, meaning, or intent of these rules will be made without further joint rulemaking by the Secretary of the Army, acting through the Chief of Engineers and the Administrator of the Environmental Protection Agency pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(b) *Applicability.* This subpart does not alter the circumstances under which compensatory mitigation is required or the definition of ''waters of the United States,'' which is provided at § 230.3(s). Use of resources as compensatory mitigation that are not otherwise subject to regulation under Section 404 of the Clean Water Act does not in and of itself make them subject to such regulation.

(c) *Sequencing.* Pursuant to these requirements, the district engineer will issue a section 404 permit only upon a determination that the permit applicant has taken all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that a section 404 activity

complies with this part of the Section 404(b)(1) Guidelines.

(d) *Accounting for regional variations.* Where appropriate, district engineers shall account for regional characteristics of aquatic resource types, functions, services, and values when determining performance standards and monitoring requirements for compensatory mitigation projects.

§ 230.92 Definitions.

For the purposes of this subpart, the following terms are defined:

Adaptive management means the development of a management strategy that anticipates the challenges associated with likely future impacts to the aquatic resource functions of the mitigation site. It acknowledges the risk and uncertainty of compensatory mitigation projects and allows modification of those projects to optimize performance. The process will provide guidance on the selection of appropriate remedial measures that will ensure the continued adequate provision of aquatic resource function and involves analysis of monitoring results to identify potential problems of a compensatory project and identification of measures to rectify those problems.

Buffer means an upland and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Compensatory mitigation project means a restoration, establishment, enhancement, and/or preservation activity implemented by the permittee as a requirement of a DA permit (i.e., permittee-responsible mitigation), or by a third party (e.g., a mitigation bank).

Credit means a unit of measure (e.g., a functional or area measure) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of function is based on the aquatic resources restored, established, enhanced, or preserved.

DA means Department of the Army.

Days means calendar days.

Debit means a unit of measure (e.g., a functional or area measure) representing the loss of aquatic functions at an impact or project site. The measure of function is based on the aquatic resources impacted by the authorized activity.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation) means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland or deepwater site. Establishment results in a gain in aquatic resource area.

Functional capacity means the degree to which an area of aquatic resource performs a specific function.

Functions means the physical, chemical, and biological processes that occur in aquatic resources and other ecosystems.

Impact means adverse effect.

In-kind means a resource type that is structurally and/or functionally similar to the impacted resource type.

Interagency Review Team (IRT) means an interagency group of Federal, Tribal, State, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank.

Mitigation bank means a site, or suite of sites, where aquatic resources such as wetlands or streams are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for authorized impacts to similar resources. Third-party mitigation banks generally sell compensatory mitigation credits to permittees whose obligation to provide mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Mitigation banking instrument means the legal document for the establishment, operation, and use of a mitigation bank.

Off-site means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to or near the parcel containing the impact site.

On-site means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to or near the impact site.

Out-of-kind means a resource type that is structurally and/or functionally different than the impacted resource type.

Performance standards are observable or measurable attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Reference aquatic resources are aquatic resources that represent the range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riparian areas are lands adjacent to a waterbody. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas are

adjacent to streams, lakes, and estuarine-marine shorelines and provide a variety of ecological functions and services and help improve or maintain local water quality.

Service area means the geographic area within which impacts can be mitigated at a particular mitigation bank, as designated in its instrument.

Services means the benefits that human populations receive from functions that occur in aquatic resources and other ecosystems.

Sponsor means any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

Standard permit means a standard, individual permit issued under the authority of Section 404 of the Clean Water Act.

Values means the utility or satisfaction that humans derive from aquatic resource services. Values can be described in monetary terms or in qualitative terms, although many of the values associated with aquatic resources cannot be easily monetized. Values can be either use values (e.g., recreational enjoyment) or non-use values (e.g., stewardship, biodiversity).

Watershed plan means a plan developed by federal, tribal, state, and/or local government agencies, in consultation with relevant stakeholders. A watershed plan addresses ecological conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and watershed management plans.

§ 230.93 General compensatory mitigation requirements.

(a) *General considerations.* The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA permits. The district engineer must determine the compensatory mitigation to be required in a DA permit, based on what is available, practicable, and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the economic costs of the compensatory mitigation. Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular DA permit. Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts.

(b) *Location and type of compensatory mitigation.* (1) Where project impacts are located within the service area of an approved mitigation bank, and the mitigation bank has credits available for the type of resource impacted, the project's compensatory mitigation requirements may be met by the purchase of an appropriate number of credits from the mitigation bank.

(2) Where practicable and appropriate, the district engineer will require that the location and aquatic resource type of permittee-responsible compensatory mitigation necessary to offset anticipated impacts be consistent with an established watershed plan or be determined using the principles of a watershed approach as outlined in paragraph (c) of this section. The district engineer and the IRT should also use a watershed approach to the extent practicable in reviewing mitigation banking instruments.

(3) Where reliance on a watershed plan or approach is not practicable, the district engineer will consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

(4) If, after considering opportunities for on-site, in-kind compensatory mitigation as provided in paragraph (b)(3) of this section, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted activity, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted activity, the district engineer shall require that this alternative compensatory mitigation be provided. In general, compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions, services, and values, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses.

(c) *Watershed approach to compensatory mitigation.* (1) The district engineer must use a watershed approach to establish compensatory mitigation requirements in DA permits to the extent appropriate and practicable. Where an applicable watershed plan is available, the watershed approach should be based on the existing plan. Where no such plan is available, the watershed approach should be based on information provided by the project sponsor or available from other sources. The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.

(2) *Considerations.* (i) A watershed approach to compensatory mitigation considers the importance of landscape position and resource type of compensatory mitigation projects for the ecological functions and sustainability of aquatic resources within the watershed. Such an approach considers how the types and locations of compensatory mitigation projects will provide the desired aquatic resource functions, and will continue to function over time in a changing landscape. It also considers the habitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed, such as storm water management or habitat conservation programs. It includes the protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed.

(ii) Locational factors (e.g., hydrology, surrounding land use) are important to the success of compensatory mitigation for impacted habitat functions and values and may lead to siting of such mitigation away from the project area. However, consideration should also be given to functions, services, and values (e.g., water quality, flood control, shoreline protection) that will likely need to be addressed at or near the areas impacted by the permitted project.

(iii) A watershed approach to compensatory mitigation may involve planning efforts to inventory historic and existing aquatic resources, including identification of degraded aquatic resources, and planning efforts to identify immediate and long-term aquatic resource needs within watersheds that can be met through

permittee-responsible mitigation projects or mitigation banks. Watershed planning efforts may identify and/or prioritize aquatic resources that are important for maintaining and restoring ecological functions of the watershed.

(3) *Information Needs.* The use of a watershed approach is based on analysis of information regarding watershed conditions and needs. Such information includes: Current trends in habitat loss or conversion, cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species, site conditions that favor or hinder the success of mitigation projects, chronic environmental problems such as flooding or poor water quality, and local watershed goals and priorities. This information may be contained in an existing watershed plan or may be available from other sources. The level of information and analysis needed to support a watershed approach must be commensurate with the scope and scale of the proposed project requiring a DA permit, as well as the functions lost as a result of that project.

(d) *Site selection.* The compensatory mitigation project site must be ecologically suitable for providing the desired aquatic resource functions. In determining the ecological suitability of the compensatory mitigation project site, the district engineer must consider the following factors:

(1) Hydrological conditions, soil characteristics, and other physical and chemical characteristics;

(2) Watershed-scale features, such as aquatic habitat diversity, habitat connectivity, and other landscape scale functions;

(3) The size and location of the compensatory mitigation site relative to hydrologic sources (including the availability of water rights) and other ecological features;

(4) Compatibility with adjacent land uses and watershed management plans;

(5) Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources (e.g., shallow sub-tidal habitat, mature forests), cultural sites, or habitat for Federally-or State-listed threatened and endangered species; and

(6) Other relevant factors including, but not limited to, development trends, anticipated land use changes, habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality goals, floodplain management goals, and the relative potential for chemical contamination of the aquatic resources.

(e) *Mitigation type.* (1) In general, in-kind mitigation is preferable to out-of-kind mitigation because it is most likely to compensate for the functions, services, and values lost at the impact site. For example, restoration of wetlands is most likely to compensate for unavoidable impacts to wetlands, while restoration of streams is most likely to compensate for unavoidable impacts to streams. Thus, except as provided in paragraph (e)(2) of this section, the district engineer should require that compensatory mitigation be of a similar type to the impacted aquatic resource.

(2) If the district engineer determines through the decision framework in paragraph (b) of this section that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed, the district engineer may authorize the use of such out-of-kind compensatory mitigation. Factors that should be considered in making this determination include historic loss of habitat types within the watershed, the needs of sensitive species, appropriate mixes of habitat to maintain ecosystem viability, the relative likelihood of success in establishing different habitat types, needs for ecosystem services, and local watershed goals and priorities. The basis for authorization of out-of-kind compensatory mitigation must be documented in the administrative record for the permit action.

(f) *Amount of compensatory mitigation.* The district engineer must require an amount of compensatory mitigation for unavoidable impacts to aquatic resources sufficient to replace lost aquatic resource functions. In cases where functional assessment methods are available, appropriate, and practical to use, district engineers should use those functional assessment methods to determine how much compensatory mitigation should be required. If a functional assessment is not used, a minimum one-to-one acreage or linear foot replacement ratio should be used as a surrogate for functional replacement. The district engineer must require a mitigation ratio greater than one-to-one where necessary to account for the method of compensatory mitigation (e.g., preservation), differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project, temporal losses of aquatic resource functions, and/or the difficulty of restoring or establishing the desired aquatic resource type and functions. The rationale for the required replacement ratio must be documented in the administrative record for the permit action.

(g) *Use of mitigation banks.* Mitigation banks may be used to compensate for impacts to aquatic resources authorized by general permits and individual permits, including after-the-fact permits. Mitigation banks may also be used to satisfy requirements arising out of an enforcement action, such as supplemental environmental projects.

(h) *Preservation.* (1) Preservation may be used to provide compensatory mitigation for activities authorized by DA permits where:

(i) The resources provide important physical, chemical, or biological functions for the watershed;

(ii) The resources contribute to the ecological sustainability of the watershed;

(iii) Preservation is determined by the district engineer to be appropriate and practicable;

(iv) The resources are under threat of destruction or adverse modifications; and

(v) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

(2) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach, as described in paragraph (c) of this section, but compensation ratios should be higher.

(i) *Buffers.* District engineers may require that compensatory mitigation project sites include, and may provide compensatory mitigation credit for, the establishment and maintenance of riparian areas and/or upland buffers around the restored, established, enhanced, or preserved aquatic resources where necessary to ensure the long-term viability of those resources.

(j) *Relationship to other Federal, Tribal, State, and local programs.* Compensatory mitigation projects for DA permits may also be used to compensate for environmental impacts authorized under other programs, such as Tribal, State, or local wetlands regulatory programs, the National Pollutant Discharge Elimination System Permit Program, Corps civil works projects, and Superfund removal and remedial actions, consistent with the terms and requirements of these programs and subject to the following

considerations. The project must include appropriate compensatory mitigation for unavoidable impacts to aquatic resources authorized by the DA permit, over and above what would be required under other programs to address other impacts. Under no circumstances may the same credits be used to provide mitigation for more than one activity. However, where appropriate, compensatory mitigation projects, including mitigation banks, may be designed to holistically address requirements under multiple programs and authorities for the same activity. Except for projects undertaken by Federal agencies, or where Federal funding is specifically authorized to provide compensatory mitigation, Federally-funded wetland conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program and the Partners for Wildlife Program activities, cannot be used for the purpose of generating compensatory mitigation credits for activities authorized by DA permits. However, compensatory mitigation credits may be generated by activities undertaken in conjunction with, but supplemental to, such programs in order to maximize the overall ecological benefits of the conservation project.

(k) *Permit conditions.* The compensatory mitigation requirements for a DA permit, including the amount and type of compensatory mitigation, must be clearly stated in the special conditions of the individual permit or general permit verification (see 33 CFR 325.4 and 330.6(a)). The special conditions must be enforceable and describe the objectives of the compensatory mitigation project. The special conditions must also identify the party responsible for providing the compensatory mitigation. The special conditions must incorporate, by reference, compensatory mitigation plans approved by the district engineer. The performance standards and monitoring required for the compensatory mitigation project must also be clearly stated in the special conditions or the approved compensatory mitigation plan. The special conditions must also describe any required financial assurances or long-term management provisions for the compensatory mitigation project. If a mitigation bank is used to provide the required compensatory mitigation, the special conditions must indicate which mitigation bank will be used, and specify the required number and type of credits the permittee is required to purchase.

(l) *Party responsible for compensatory mitigation.* (1) The special conditions of the DA permit must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

(2) For mitigation banks, the mitigation banking instrument must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

(3) If a mitigation bank is approved by the district engineer to provide required compensatory mitigation for a DA permit, the special conditions of that DA permit must indicate which mitigation bank will be used to provide that compensatory mitigation. In such cases, the mitigation bank assumes responsibility for providing the required compensatory mitigation after the permittee has secured those credits from the sponsor.

(m) *Timing.* Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the activity causing the authorized impacts. Where it is not practicable to complete the initial physical and biological improvements required by the approved mitigation plan by the first full growing season following the impacts resulting from the permitted activity, the district engineer may require additional compensatory mitigation to offset temporal losses of aquatic functions that will result from the permitted activity.

(n) *Financial assurances.* (1) The district engineer shall require sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with applicable performance standards. In cases where an alternate mechanism is available to ensure a high level of confidence that the compensatory mitigation will be provided and maintained (e.g., a formal, documented commitment from a government agency or public authority) the district engineer may determine that financial assurances are not necessary for that compensatory mitigation project.

(2) The amount of the required financial assurances must be determined by the district engineer, in consultation with the project sponsor, and must be based on the size and complexity of the compensatory mitigation project, the degree of completion of the project at the time of project approval, the likelihood of success, the past performance of the project sponsor, and any other factors the district engineer deems appropriate. Financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments, subject to the approval of the district engineer. The rationale for determining the amount of the required financial assurances must be documented in the administrative record for the DA permit.

(3) Financial assurances shall be phased out once the compensatory mitigation project has been determined by the district engineer to be successful in accordance with its performance standards. The DA permit or mitigation banking instrument must clearly specify the conditions under which the financial assurances are to be released to the permittee, sponsor, and/or other financial assurance provider, including, as appropriate, linkage to achievement of performance standards, adaptive management, or compliance with special conditions.

(o) *Compliance with applicable law.* The compensatory mitigation project must comply with all applicable Federal, state, and local laws. The DA permit or mitigation banking instrument must not require participation by the Corps or any other Federal agency in project management, including receipt or management of financial assurances or long-term financing mechanisms, except as determined by the Corps or other agency to be consistent with its statutory authority, mission, and priorities.

§ 230.94 Planning and documentation.

(a) *Pre-application consultations.* Potential applicants for standard permits are encouraged to participate in pre-application meetings with the Corps and appropriate agencies to discuss potential compensatory mitigation requirements and information needs.

(b) *Public review and comment.* (1) For an activity that requires a standard DA permit pursuant to Section 404 of the Clean Water Act, the public notice for the proposed activity must explain how impacts associated with the proposed activity are to be avoided, minimized, and compensated for. This explanation shall address the amount, type, and location of any proposed compensatory mitigation, including any out-of-kind mitigation, or indicate an intention to use an approved mitigation bank. The level of detail provided in the public notice must be commensurate with the scope and scale of the project.

(2) For activities authorized by general permits, review of compensatory mitigation plans must be conducted in

accordance with the terms and conditions of those general permits and applicable regulations.

(c) *Mitigation plan.* (1) The permittee or mitigation bank sponsor must prepare a draft mitigation plan and submit it to the district engineer for review. After addressing any comments provided by the district engineer, the permittee or sponsor must prepare a final mitigation plan, which must be approved by the district engineer prior to issuing the DA permit or approving the mitigation banking instrument. The approved mitigation plan must be incorporated into the DA permit or mitigation banking instrument by reference. The mitigation plan must include the items described in paragraphs (c)(2) through (c)(14) of this section, except that the district engineer may waive specific items if he determines that they are not applicable to a particular project. Permittees who plan to fulfill their compensatory mitigation obligations by purchasing credits from an approved mitigation bank need only include the name of the mitigation bank and the items described in paragraphs (c)(5) and (c)(6) of this section in their mitigation plan. The level of detail of the mitigation plan should be commensurate with the scale and scope of the project.

(2) *Objectives.* A description of the aquatic resource type(s) and amount(s) that will be provided, the method of compensation (i.e., restoration, establishment, enhancement, and/or preservation), and the manner in which the aquatic resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, or other geographic area of interest.

(3) *Site selection.* A description of the factors considered during the site selection process. This should include consideration of watershed needs, on-site alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site.

(4) *Site protection instrument.* A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site.

(5) *Baseline information.* A description of the ecological characteristics of the proposed compensatory mitigation project site and, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, and other site characteristics. A prospective permittee planning to purchase credits from an approved mitigation bank only needs to provide baseline information about the impact site, not the mitigation bank site.

(6) *Determination of credits.* A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project compensates for unavoidable impacts to aquatic resources resulting from the permitted activity. For mitigation banks, it should include a description of resource types for which the mitigation bank may be used as compensatory mitigation and the number of credits to be provided for each resource type. This may include provisions for adjusting credits in the future, both downward (if performance standards are not met) or upward (if performance standards are significantly exceeded). For permittees intending to purchase credits from an approved mitigation bank, it should include the number and type of credits to be purchased and how these were determined.

(7) *Mitigation work plan.* Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; plant species to be planted at the site; the use of natural regeneration or seed banks to provide the desired plant community at the site; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; erosion control measures; and proposed stream geomorphology, if applicable.

(8) *Maintenance plan.* A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

(9) *Performance standards.* Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.

(10) *Monitoring requirements.* A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.

(11) *Long-term management plan.* A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including the party responsible for long-term management and long-term financing mechanisms.

(12) *Adaptive management plan.* A description of procedures to address potential changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and conducting remediation to provide aquatic resource functions.

(13) *Financial assurances.* A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.

(14) *Other information.* The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the compensatory mitigation project.

§ 230.95 Ecological performance standards.

The mitigation plan must contain performance standards that will be used to assess whether the project is achieving its objectives. Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. Performance standards should be based on attributes that are objective, verifiable, and can be measured with a reasonable amount of effort. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow

early identification of potential problems and appropriate adaptive management.

§ 230.96 Monitoring.

(a) *General.* Monitoring the compensatory mitigation project site is necessary to determine if the project is meeting its performance standards, and to determine if remediation is necessary to ensure that the compensatory mitigation project is accomplishing its objectives. The district engineer must require the submission of monitoring reports to assess the development and condition of the compensatory mitigation project, unless he determines that monitoring is not practicable for that compensatory mitigation project. The mitigation plan must address the monitoring requirements for the compensatory mitigation project, including the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring, the frequency for submitting monitoring reports to the district engineer, and the party responsible for submitting those monitoring reports to the district engineer.

(b) *Monitoring period.* The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs). Following project implementation, the district engineer may waive the remaining monitoring requirements upon a determination that the compensatory mitigation project has achieved its performance standards. Conversely the district engineer may extend the original monitoring period upon a determination that performance standards have not been met or the compensatory mitigation project is not on track to meet them. The district engineer may also revise monitoring requirements when remediation is required.

(c) *Monitoring reports.* (1) The district engineer must determine the information to be included in monitoring reports. This information should be sufficient for the district engineer to determine how the compensatory mitigation project is progressing towards meeting its performance standards, and may include plans, maps, and photographs to illustrate site conditions. Monitoring reports may also include the results of functional assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

(2) Monitoring reports should be provided by the district engineer to interested Federal, Tribal, State, and local resource agencies. The district engineer and representatives of Federal, Tribal, State, and/or local resource agencies may conduct regular (e.g., annual) on-site inspections, as appropriate, to monitor performance of the mitigation site. Monitoring reports must be made available to the public upon request.

§ 230.97 Management.

(a) *Site protection.* The aquatic habitats, riparian areas, buffers, and uplands that comprise the overall compensatory mitigation project should be provided long-term protection, through appropriate real estate instruments such as conservation easements held by, or transfer of title to, entities such as Federal, Tribal, State, or local resource agencies, non-profit conservation organizations, or private land managers, or other acceptable means for government property, such as Federal facility management plans or integrated natural resources management plans. The real estate instrument for the long-term protection of the compensatory mitigation site should restrict or prohibit incompatible uses (e.g., clear cutting) that might otherwise jeopardize the objectives of the compensatory mitigation project. Where appropriate, multiple instruments recognizing compatible uses (e.g., fishing or grazing rights) may be used.

(b) *Sustainability.* Compensatory mitigation projects should be designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. This includes minimization of active engineering features (e.g., pumps) and appropriate siting to ensure that natural hydrology and landscape context will support long-term sustainability. Where active long-term management and maintenance are necessary to ensure long-term sustainability (e.g., prescribed burning, invasive species control, maintenance of water control structures, easement enforcement), the responsible party must provide for such management and maintenance. This includes the provision of long-term financing mechanisms where necessary.

(c) *Adaptive management.* (1) If monitoring or other information indicates that the compensatory mitigation project is not progressing towards meeting its performance standards as anticipated, the responsible party must notify the district engineer. The district engineer must require remediation to correct the deficiencies in the project to the extent appropriate and practicable. In determining appropriate and practicable remediation, the district engineer will consider whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the compensatory mitigation project.

(2) The district engineer, in consultation with the responsible party (and other Federal, Tribal, state, and local agencies, as appropriate), will determine the appropriate remediation requirements. The required remediation may include site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The remediation must be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives.

(3) The performance standards must be revised where necessary to assess the success of remediation efforts and/or the realization of comparable ecological benefits that were considered in determining remediation requirements.

(d) *Long-term management.* (1) The permit conditions or mitigation banking instrument must identify the party responsible for the ownership and long-term management of the compensatory mitigation project, once performance standards have been achieved. The permit conditions or mitigation banking instrument may contain provisions allowing the permittee or sponsor to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the district engineer. The land stewardship entity need not be identified in the original permit or mitigation banking instrument, as long as the future transfer of long-term management responsibility is approved by the district engineer.

(2) Provisions necessary for long-term financing must be included in the original permit or mitigation banking instrument. Appropriate long-term financing mechanisms include endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, a formal commitment to accept stewardship responsibilities for the

project is acceptable in lieu of specific financial arrangements.

§ 230.98 Mitigation banks.

(a) *General considerations.* (1) All mitigation banks must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits. To the maximum extent practicable, mitigation banks must be planned and designed to be self-sustaining over time, but some active management and maintenance may be required to ensure their long-term viability and sustainability. Examples of acceptable management activities include maintaining fire dependent habitat communities in the absence of natural fire and controlling invasive exotic plant species.

(2) Mitigation banks may be sited on public or private lands. Siting on public land is only permitted when done in accordance with the mission and policies of the land management agency and with its written approval. Credits for mitigation banks on public land must be based solely on aquatic resource functions provided by the mitigation bank, over and above those provided by public programs already planned or in place.

(3) All mitigation banks must comply with the standards in this part, if they are to be used to provide compensatory mitigation for activities authorized by DA permits, regardless of whether they are sited on public or private lands and whether the sponsor is a governmental or private entity.

(b) *Interagency Review Team.* (1) The district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of the mitigation bank. The district engineer or his designated representative serves as Chair of the IRT. In cases where a mitigation bank is proposed to satisfy the requirements of another Federal, Tribal, State, or local program, in addition to compensatory mitigation requirements of DA permits, the district engineer may designate an appropriate official of the responsible agency as co-Chair of the IRT.

(2) In addition to the Corps, representatives from the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, NOAA Fisheries, the Natural Resources Conservation Service, and other Federal agencies, as appropriate, may participate in the IRT. The IRT may also include representatives from Tribal, State, and local regulatory and resource agencies, where such agencies have authorities and/or mandates directly affecting, or affected by, the establishment, operation, or use of the mitigation bank. The district engineer will seek to include all public agencies with a substantive interest in the establishment of the mitigation bank on the IRT, but retains final authority over its composition.

(3) The primary role of the IRT is to facilitate the establishment of mitigation banks through the development of mitigation banking instruments. The IRT will review the prospectus, mitigation plan, and mitigation banking instrument and provide comments to the district engineer. Members of the IRT may also sign the mitigation banking instrument, if they so choose. By signing the mitigation banking instrument, the IRT members indicate their agreement with the terms of the instrument. The IRT will also advise the district engineer in assessing monitoring reports, recommending remedial measures, approving credit release, and approving modifications to a mitigation banking instrument.

(4) The district engineer will give full consideration to the comments and advice of the IRT. However, the district engineer alone retains final authority for approval of the mitigation banking instrument. However, in cases where the mitigation bank is also intended to satisfy the requirements of another agency, that agency must also approve the mitigation banking instrument before it can be used to satisfy such requirements.

(c) *Review process.* (1) The sponsor is responsible for preparing all documentation associated with establishment of the mitigation bank, including the prospectus, mitigation plan, and mitigation banking instrument. The prospectus provides an overview of the mitigation bank project and serves as the basis for public and initial IRT comment. The mitigation plan, as described in § 230.94(c), provides detailed plans and specifications for the mitigation bank. The mitigation banking instrument provides the authorization for the mitigation bank to provide credits to be used as compensatory mitigation for DA permits. The mitigation banking instrument must also incorporate the mitigation plan by reference.

(2) *Prospectus.* The prospectus must provide a summary of the information that will be included in the mitigation plan, at a sufficient level of detail to support informed public and IRT comment. In particular, it must describe the objectives of the proposed mitigation bank, how the mitigation bank will be established and operated, the proposed service area, and the general need for, and technical feasibility of, the proposed mitigation bank. The prospectus must discuss the ecological suitability of the site to achieve the objectives of the proposed mitigation bank. This includes the physical, chemical, and biological characteristics of the site and how that site will support the planned types of aquatic resources and functions. It should also discuss the proposed ownership arrangements and long-term management of the mitigation bank. The review process begins when the sponsor submits a complete prospectus to the district engineer. The district engineer will notify the sponsor within 15 days whether or not a submitted prospectus is complete.

(3) *Preliminary review of prospectus.* Prior to submitting a prospectus, the sponsor may elect to submit a draft prospectus to the district engineer for comment and consultation. The district engineer will provide copies of the draft prospectus to the IRT, and provide comments back to the sponsor within 30 days. Any comments from IRT members will also be forwarded to the sponsor. This preliminary review is optional but is strongly recommended. It is intended to identify potential issues early so that the sponsor may attempt to address those issues prior to the start of the formal review process.

(4) *Public review and comment.* Within 30 days of receipt of a complete prospectus, the district engineer will provide public notice of the proposed mitigation bank, in accordance with the public notice procedures at 33 CFR 325.3. The public notice must include a summary of the prospectus and indicate that the full prospectus is available to the public for review upon request. The comment period for public notice will generally be 30 days, unless the district engineer determines that a longer or shorter comment period is appropriate. The district engineer will notify the sponsor if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary. Copies of all comments received in response to the public notice must be distributed to the other IRT members and to the sponsor within 15 days of the close of the public comment period. The district engineer and IRT members may also provide comments to the sponsor at this time, and copies of any such comments will also be distributed to all IRT members. If the construction of a mitigation bank requires DA authorization through the standard permit process, the public notice requirement may be satisfied through the public notice provisions of the standard permit processing

procedures, provided all of the relevant information is provided.

(5) *Draft mitigation banking instrument.* After considering comments from the district engineer, the IRT, and the public, if the sponsor chooses to proceed with establishment of the mitigation bank, he must prepare a draft mitigation banking instrument and submit it to the district engineer. The draft mitigation banking instrument should be based on the prospectus and must describe in detail the physical and legal characteristics of the mitigation bank and how it will be established and operated. The draft mitigation banking instrument must include the following information:

(i) *Mitigation plan,* including all applicable items listed in § 230.94(c)(2) through (14);

(ii) *Geographic service area of the mitigation bank.* The service area is the watershed or other geographic area within which a mitigation bank is authorized to provide compensation for unavoidable impacts authorized by DA permits. The service area should be large enough to support an economically viable mitigation bank, but must not be larger than is appropriate to ensure that the aquatic resources provided by the mitigation bank will effectively compensate for adverse environmental impacts across the entire service area. The district engineer must consider relevant environmental and economic factors when approving the service area. The district engineer may also consider locally-developed standards and criteria. In urban areas, a U.S. Geological Survey 8-digit hydrologic unit code (HUC) watershed or a smaller watershed may be an appropriate service area. In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area for the mitigation bank. The basis for determining the service area must be documented in writing and referenced in the mitigation banking instrument;

(iii) *Credit release schedule.* Credit release must be tied to achievement of specific milestones. If the mitigation bank does not achieve appropriate milestones (e.g., performance standards) as anticipated, the district engineer may modify the credit release schedule, including reducing the number of available credits or suspending credit sales altogether;

(iv) Accounting procedures;

(v) A provision stating that legal responsibility for providing the compensatory mitigation lies with the sponsor;

(vi) Default and closure provisions; and

(vii) Any other information deemed necessary by the district engineer.

(6) *IRT review.* Upon receiving a draft mitigation banking instrument, the district engineer must provide copies of the draft instrument to the IRT members for a 30 day comment period. Following the comment period, the district engineer will discuss any comments with the appropriate agencies and with the sponsor. The district engineer will seek to resolve any issues using a consensus-based approach. Within 90 days of receipt of the complete draft mitigation banking instrument, the district engineer must notify the sponsor of the status of the IRT review. Specifically, the district engineer must indicate to the sponsor if the draft mitigation banking instrument is generally acceptable and what changes, if any, are needed. If there are significant unresolved concerns that may lead to a formal objection from one or more IRT members to the final mitigation banking instrument, the district engineer will indicate the nature of those concerns.

(7) *Final mitigation banking instrument.* If the sponsor still wishes to proceed with establishment of the mitigation bank, he must submit a final mitigation banking instrument to the district engineer for approval. The final mitigation banking instrument should address any comments provided as a result of the IRT review process. The final mitigation banking instrument must be provided directly by the sponsor to all members of the IRT. Within 15 days of receipt of the final mitigation banking instrument, the district engineer will notify the IRT members whether or not he intends to approve the mitigation banking instrument. If no IRT member objects, by initiating the dispute resolution process in paragraph (d) of this section within 30 days of receipt of the final mitigation banking instrument, the district engineer will notify the sponsor of his final decision and, if the mitigation banking instrument is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the mitigation banking instrument is approved, arrange for it to be signed by the appropriate parties. The final mitigation banking instrument must contain the types of information items listed in paragraphs (c)(5)(i) through (vii) of this section.

(d) *Dispute resolution process.* (1) Within 15 days of receipt of the district engineer's notification of intent to approve a mitigation banking instrument, the Regional Administrator of the U.S. EPA, the Regional Director of the U.S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service, and/or other senior officials of agencies represented on the IRT may notify the district engineer and other IRT members by letter if they object to the approval of the proposed final mitigation banking instrument. This letter must include an explanation of the basis for the objection and, where feasible, offer recommendations for resolving the objections. If the district engineer does not receive any objections within this time period, he may proceed to final action on the mitigation banking instrument.

(2) The district engineer must respond to the objection within 30 days of receipt of the letter. The district engineer's response may indicate an intent to disapprove the mitigation banking instrument as a result of the objection, an intent to approve the mitigation banking instrument despite the objection, or may provide a modified mitigation banking instrument that attempts to address the objection. The district engineer's response must be provided to all IRT members.

(3) Within 15 days of receipt of the district engineer's response, if the Regional Administrator or Regional Director is not satisfied with the response he may forward the issue to the Assistant Administrator, Office of Water of the U.S. EPA, the Assistant Secretary for Fish and Wildlife and Parks of the U.S. FWS, or the Undersecretary for Oceans and Atmosphere of NOAA, as appropriate, for review and must notify the district engineer by faxed letter (with copies to all IRT members) that the issue has been forwarded for Headquarters review. This step is available only to the IRT members representing these three Federal agencies, however other IRT members who do not agree with the district engineer's final decision do not have to sign the mitigation banking instrument or recognize the mitigation bank for purposes of their own programs and authorities. If an IRT member other than the one filing the original objection has a new objection based on the district engineer's response, he may use the first step in this procedure (paragraph (d)(1) of this section) to provide that objection to the district engineer.

(4) If the issue has not been forwarded to the objecting agency's Headquarters, then the district engineer may proceed with final action on the mitigation banking instrument. If the issue has been forwarded to the objecting agency's Headquarters, the district engineer must hold in abeyance the final action on the mitigation banking instrument, pending Headquarters level review described below.

(5) Within 20 days from the date of the letter requesting Headquarters level review, the Assistant Administrator, Office of Water, the Assistant Secretary for Fish and Wildlife and Parks, or the Undersecretary for Oceans and Atmosphere must either notify the Assistant Secretary of the Army (Civil Works) (ASA(CW)) that further review will not be requested, or request that the ASA(CW) review the draft mitigation banking instrument.

(6) Within 30 days of receipt of the letter from the objecting agency's Headquarters request for ASA(CW)'s review of the draft mitigation banking instrument, the ASA(CW), through the Director of Civil Works, must review the draft mitigation banking instrument and advise the district engineer on how to proceed with final action on that instrument. The ASA(CW) must immediately notify the Assistant Administrator, Office of Water, the Assistant Secretary for Fish and Wildlife and Parks, and/or the Undersecretary for Oceans and Atmosphere of the final decision.

(7) In cases where the dispute resolution procedure is used, the district engineer must notify the sponsor of his final decision within 150 days of receipt of the final mitigation banking instrument.

(e) *Extension of deadlines.* (1) The deadlines in paragraphs (c) and (d) of this section may be extended by the district engineer at his sole discretion in cases where:

(i) Compliance with other applicable laws, such as Endangered Species Act Section 7 consultation, is required;

(ii) Timely submittal of information necessary for the review of the proposed mitigation bank is not accomplished by the sponsor; or

(iii) Information that is essential to the district engineer's response cannot be reasonably obtained within the specified time frame.

(2) In such cases, the district engineer must promptly notify the sponsor in writing of the extension and the reason for it. Such extensions shall be for the minimum time necessary to resolve the issue necessitating the extension.

(f) *Modification of mitigation banking instruments.* (1) In general, modification of an approved mitigation banking instrument must follow the procedures in paragraph (c) of this section, unless the district engineer determines that the streamlined review process described in paragraph (f)(2) of this section is warranted. The streamlined review process may be used for changes reflecting adaptive management of the mitigation bank, changes in credit release schedules, and changes that the district engineer determines are non-significant.

(2) If the district engineer determines that the streamlined review process is warranted, he must notify the IRT members and the sponsor of this determination and provide them with copies of the proposed modification. IRT members and the sponsor have 30 days to notify the district engineer if they have concerns with the proposed modification. If IRT members or the sponsor notify the district engineer of such concerns, the district engineer shall attempt to resolve those concerns. Within 60 days of providing the proposed modification to the IRT, the district engineer must notify the IRT members of his intent to approve or disapprove the proposed modification. If no IRT member objects, by initiating the dispute resolution process in paragraph (d) of this section, within 15 days of receipt of this notification, the district engineer will notify the sponsor of his final decision and, if the modification is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will so notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the modification is approved, arrange for it to be signed by the appropriate parties.

(g) *Umbrella mitigation banking instruments.* A single mitigation banking instrument may provide for future authorization of additional mitigation bank sites. As additional sites are selected, they must be included in the mitigation banking instrument as modifications, using the procedures in paragraph (c) of this section.

(h) *Coordination of mitigation banking instrument and DA permit issuance.* In cases where initial establishment of the mitigation bank involves activities requiring DA authorization, the permit should not be issued until all relevant provisions of the mitigation banking instrument have been substantively determined. This is to ensure that the DA permit accurately reflects all relevant provisions of the final mitigation banking instrument.

(i) *Project implementation.* Authorization to sell credits to satisfy compensatory mitigation requirements in DA permits is contingent on compliance with all of the terms of the mitigation banking instrument. This includes constructing a mitigation bank in accordance with the mitigation plan as approved by the district engineer and incorporated by reference in the mitigation banking instrument. If the aquatic resource restoration, establishment, enhancement, and/or preservation activities cannot be implemented in accordance with the approved mitigation plan, the district engineer must consult with the sponsor and the IRT to consider modifications to the mitigation banking instrument, including adaptive management, revisions to the credit release schedule, and alternatives for providing compensatory mitigation to satisfy any credits that have already been sold.

(j) *Credit withdrawal from mitigation banks.* The mitigation banking instrument may allow for initial debiting of a percentage of the total credits projected at mitigation bank maturity provided the following conditions are satisfied: the mitigation banking instrument and mitigation plan have been approved, the mitigation bank site has been secured, appropriate financial assurances have been established, and any other requirements determined to be necessary by the district engineer have been fulfilled. The mitigation banking instrument must provide a schedule for additional credit releases as appropriate milestones are achieved (see paragraph (k)(7) of this section).

(k) *Determining credits.* (1) *Units of measure.* For mitigation banks, the principal units for credits and debits are acres or linear feet or functional assessment units of particular resource types. Functional assessment units may be linked to acres or linear feet.

(2) *Functional assessment.* Where practicable, an appropriate functional assessment method (e.g., hydrogeomorphic approach to wetlands functional assessment) must be used to assess and describe the aquatic resource types that will be restored, established, enhanced and/or preserved by the mitigation bank.

(3) *Credit production.* The number of credits must reflect the difference between pre- and post-mitigation bank site conditions. If an existing resource is being enhanced, the number of credits should reflect only the enhancements produced by construction of the mitigation bank. This may be reflected in a discounted number of credits

relative to the total acres or linear feet encompassed by the mitigation bank.

(4) *Credit value.* Once a credit is debited, its value cannot change.

(5) *Credits provided by preservation.* These credits should be specified as acres or linear feet of preservation of a particular resource types. In determining the compensatory mitigation requirements for DA permits using the mitigation bank, the district engineer should apply a higher mitigation ratio if the requirements are to be met through the use of preservation credits. In determining this higher ratio, the district engineer must consider the relative importance of both the impacted and the preserved aquatic resources in sustaining watershed functions as described in § 230.93(c).

(6) *Credits provided by riparian areas, buffers, and uplands.* These credits should be specified as acres or linear feet of riparian area, buffer, and uplands respectively. Non-aquatic resources can only be used as compensatory mitigation for impacts to aquatic resources authorized by DA permits when those resources are essential to maintaining the ecological viability of adjoining aquatic resources. In determining the compensatory mitigation requirements for DA permits using the mitigation bank, the district engineer may authorize the use of riparian area, buffer and/or upland credits if he determines that these areas are essential to sustaining watershed functions as described in § 230.93(c) and are the most appropriate compensation for the authorized impacts.

(7) *Credit release schedule.* The terms of the credit release schedule must be specified in the mitigation banking instrument. The credit release schedule may provide for release of a limited portion of projected credits once the mitigation banking instrument, including the mitigation plan, has been approved, the site secured, and appropriate financial assurances established. Release of the remaining credits must be tied to performance based milestones (e.g., construction, planting, establishment of specified plant and animal communities). The credit release schedule should reserve a significant share of the total credits for release only after full achievement of ecological performance standards. When determining the credit release schedule, factors to be considered may include, but are not limited to: the method of providing compensatory mitigation credits (e.g., restoration), the likelihood of success, the nature and amount of work needed to generate the mitigation bank credits, the aquatic resource type(s) and function(s) to be provided by the mitigation bank, and the initial capital costs needed to establish the mitigation bank. Once released, credits may only be used to satisfy compensatory mitigation requirements in a DA permit if they have been specifically approved by the district engineer as part of the permit review process.

(8) *Release of credits.* Credit releases must be approved by the district engineer. The sponsor must submit documentation to the district engineer demonstrating that the appropriate milestones for a release of credits have been achieved and requesting the release. The district engineer will provide copies of this documentation to the IRT members for review. IRT members must provide any comments to the district engineer within 15 days of receiving this documentation. However, if the district engineer determines that a site visit is necessary, IRT members must provide any comments to the district engineer within 30 days of receipt of this documentation. After full consideration of any comments received, the district engineer will determine whether the milestones have been achieved and the credits can be released.

(9) *Adjustments to credit totals and release schedules.* (i) If, after achieving all performance standards as specified in the mitigation banking instrument, the sponsor finds that the mitigation bank has developed aquatic resource functions substantially in excess of those upon which the original credit totals and release schedule were based, he may request that the mitigation banking instrument be amended in accordance with the procedures in paragraph (f) of this section. This request must include detailed documentation of the aquatic resource functions provided by the mitigation bank site, an explanation of how those aquatic resource functions substantially exceed the functions upon which the original credit totals were based, an explanation of the basis for calculating the additional credits, and any other information deemed necessary by the district engineer.

(ii) If the district engineer determines that the mitigation bank is not meeting performance standards, he may reduce the number of available credits or suspend credit sales. The district engineer may also require adaptive management and/or direct the use of financial assurances for remediation.

(l) *Reporting.* (1) *Ledger account.* The mitigation banking instrument must contain a provision requiring the sponsor to establish and maintain a ledger to account for all credit transactions for the mitigation bank. Each time an approved credit transaction occurs, the sponsor must notify the district engineer. The sponsor must compile an annual ledger report showing the beginning and ending balance of available credits of each resource type, all additions and subtractions of credits, and any other changes in credit availability (e.g., additional credits released, credit sales suspended). The ledger report must be submitted to the district engineer, who will distribute copies to the IRT members. The ledger report is part of the administrative record for the mitigation bank. The district engineer will make the ledger report available to the public upon request.

(2) *Monitoring reports.* The sponsor is responsible for monitoring the mitigation bank site in accordance with the approved monitoring requirements to determine the level of success and identify problems requiring remedial action. Monitoring must be conducted in accordance with the requirements in § 230.96, and at time intervals appropriate for the particular project type and until such time that the district engineer, in consultation with the IRT, has determined that the performance standards have been attained. The mitigation banking instrument must include requirements for periodic monitoring reports to be submitted to the district engineer, who will provide copies to other IRT members.

(m) *Use of credits.* All activities authorized by DA permits are eligible, at the discretion of the district engineer, to use a mitigation bank to compensate for unavoidable impacts to aquatic resources, such as streams and wetlands. The district engineer will determine the number and type(s) of credits required to compensate for the authorized impacts. Permit applicants may propose to use a particular mitigation bank to provide the required compensatory mitigation. The banker must provide the permit applicant with a statement of credit availability. The district engineer must review the permit applicant's compensatory mitigation proposal, and notify the applicant of his determination regarding the acceptability of using that mitigation bank. In making this determination, the district engineer must fully consider agency and public comments submitted as part of the permit review process. Use of an approved mitigation bank consistent with the terms of its instrument (e.g., the permitted activity is located within the approved service area, credits are available for an appropriate resource type) will

generally satisfy the requirement to use a watershed approach to determine compensatory mitigation requirements where feasible and considering opportunities for on-site, in-kind mitigation, as described in § 332.3(b).

(n) *IRT concerns with use of credits.* If, in the view of a member of the IRT, an issued permit or series of issued permits raises concerns about how credits from a particular mitigation bank are being used to satisfy compensatory mitigation requirements (including concerns about whether credit use is consistent with the terms of the mitigation banking instrument), the IRT member may notify the district engineer in writing of the concern and request an IRT consultation. The district engineer shall promptly consult with the IRT to address the concern. Final resolution of the concern is at the discretion of the district engineer, consistent with applicable statutes, regulations, and policies regarding compensatory mitigation requirements for DA permits.

(o) *Long-term management.* The legal mechanisms and the party responsible for the long-term management of the mitigation bank and the protection of the site must be documented in the mitigation banking instrument. The sponsor must make adequate provisions for the operation, maintenance, and long-term management of the mitigation bank site. The mitigation banking instrument may contain provisions for the sponsor to transfer long-term management responsibilities to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager. Where needed, the acquisition and protection of water rights must be secured by the sponsor and documented in the mitigation banking instrument.

(p) *Grandfathering of existing mitigation banking instruments.* All mitigation banking instruments approved after [date 90 days after publication of final rule] must meet the requirements of this part. Mitigation banks approved prior to [date 90 days after publication of final rule] may continue to operate under the terms of their existing instruments. However, any modification to such a mitigation banking instrument after [date 90 days after publication of final rule], including authorization of additional sites under an umbrella mitigation banking instrument, must be consistent with the terms of this part.

§ 230.99 In-lieu fee programs.

(a) *Suspension of future authorizations.* As of [date 90 days after publication of final rule] district engineers will not authorize new in-lieu fee programs to provide compensatory mitigation for DA permits.

(b) *Transition period for existing in-lieu fee programs.* (1) In-lieu fee programs with an approved instrument in effect as of [date 90 days after publication of final rule] may continue to sell credits consistent with the terms of that instrument until [date 5 years and 90 days after publication of final rule]. Credits that have already been sold by the in-lieu fee program on or before this date (or the date resulting from an extended deadline, as provided in paragraph (b)(2) of this section) continue to be subject to the terms and conditions of the instrument for that in-lieu fee program.

(2) In-lieu fee programs that wish to continue operating beyond this date must reconstitute themselves as a mitigation bank, consistent with the requirements of this subpart. If an in-lieu fee program has submitted a prospectus satisfying the requirements of § 230.98(c)(2) by [date 4 years and 90 days after publication of final rule] and is making a good faith effort to complete the process of obtaining an approved mitigation banking instrument that satisfies the requirements of this subpart, the district engineer may extend the deadline for final approval of this instrument beyond [date 5 years and 90 days after publication of final rule] as necessary.

(3) If the district engineer determines that the substantive requirements of this subpart pertaining to mitigation banks are already satisfied by the existing in-lieu fee program instrument, any changes necessary to reconstitute the in-lieu fee program as a mitigation bank may be accomplished using the streamlined review process in § 230.98(f)(2), otherwise a new mitigation banking instrument must be developed using the procedure in § 230.98(c).

(4) Any in-lieu fee program that has not reconstituted itself as a mitigation bank by the applicable deadline in paragraphs (b)(1) or (b)(2) of this section must cease selling credits as of that date. However, any such in-lieu fee program is still responsible for providing all credits already sold, consistent with the terms of its instrument.

Dated: March 23, 2006.

Stephen L. Johnson,

Administrator, U.S. Environmental Protection Agency.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 28, 2006

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Oil pipline rate methodologies and procedures:
Oil pipeline pricing index; five-year review; published 3-28-06

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
New Mexico; published 1-27-06
Pesticide programs:
Pesticides unregistered uses under emergency conditions; emergency exemption process; revisions; published 1-27-06

INTERIOR DEPARTMENT
Special Trustee for American Indians Office
American Indian Trust Fund Management Reform Act; amendments; published 3-28-06

LABOR DEPARTMENT
Veterans Employment and Training Service
Uniformed Services Employment and Reemployment Rights Act of 1994; implementation
Correction; published 3-28-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Egg Research and Promotion Program; regulatory review; comments due by 4-7-06; published 2-6-06 [FR E6-01563]
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 4-3-06; published 2-1-06 [FR 06-00947]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, foreign:
Tomatoes from certain Central American countries; importation; comments due by 4-7-06; published 2-6-06 [FR E6-01553]

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Mint crop insurance provisions; comments due by 4-7-06; published 2-6-06 [FR E6-01529]

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National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands and Gulf of Alaska groundfish, crab, salmon, and scallop; comments due by 4-7-06; published 2-6-06 [FR 06-01083]
Northeastern United States fisheries—
Monkfish; comments due by 4-3-06; published 3-22-06 [FR E6-04158]
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West Coast salmon; comments due by 4-4-06; published 3-20-06 [FR 06-02654]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
AmeriCorps participants, programs, and applicants:
Professional corps programs; AmeriCorps grant applications; comments due by 4-3-06; published 3-2-06 [FR 06-01934]
Program Fraud Civil Remedies Act; implementation; comments due by 4-3-06; published 2-1-06 [FR E6-01220]

DEFENSE DEPARTMENT
Right to Financial Privacy Act of 1978; obtaining information from financial institutions; practices and procedures; comments due by 4-3-06; published 2-2-06 [FR E6-01326]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Residential clothes washers; Federal preemption of California water conservation standards; California Energy Commission exemption petition; comments due by 4-7-06; published 2-6-06 [FR 06-01041]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Long-term transmission rights; public utilities operated by regional transmission organizations and independent system operators; comments due by 4-3-06; published 3-8-06 [FR E6-03286]

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Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania; comments due by 4-3-06; published 3-2-06 [FR E6-02949]
Air quality implementation plans; approval and promulgation; various States:
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Motor vehicles; fuel economy labeling; comments due by 4-3-06; published 2-1-06 [FR 06-00451]
Reports and guidance documents; availability, etc.:
Lead hazard information pamphlet; comments due by 4-7-06; published 3-8-06 [FR E6-03283]

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Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

FEDERAL RESERVE SYSTEM
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Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

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Investigational new drugs; Phase 1 drugs exemption; comments due by 4-3-06; published 1-17-06 [FR 06-00350]

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Carbon dioxide injection enhanced oil and natural gas production; comments due by 4-7-06; published 3-8-06 [FR 06-02170]
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Alabama beach mouse; comments due by 4-3-06; published 2-1-06 [FR 06-00688]

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Gas hydrate production incentives; comments due by 4-7-06; published 3-8-06 [FR 06-02169]

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Pay and performance awards; rate increase; comments due by 4-3-06; published 3-3-06 [FR E6-03016]

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Periodicals flats in mixed area distribution center bundles and sacks; new preparation; comments due by 4-6-06; published 3-7-06 [FR E6-03143]

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Airports:

Passenger facility charges; debt service, air carrier bankruptcy, and miscellaneous changes; comments due by 4-3-06; published 2-1-06 [FR 06-00896]

Airworthiness directives:

Airbus; comments due by 4-7-06; published 3-8-06 [FR E6-03264]

Boeing; comments due by 4-3-06; published 2-15-06 [FR E6-02170]

Bombardier; comments due by 4-6-06; published 3-7-06 [FR 06-02159]

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Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 4-6-06; published 3-7-06 [FR 06-02158]

McDonnell Douglas; comments due by 4-3-06; published 2-15-06 [FR E6-02176]

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Saab; comments due by 4-6-06; published 3-7-06 [FR E6-03227]

Class E airspace; comments due by 4-3-06; published 2-15-06 [FR E6-02180]

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Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

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Employment taxes and collection of income taxes at source:

Employment tax returns filing time and deposit rules modifications; comments due by 4-3-06; published 1-3-06 [FR 05-24563]

Correction; comments due by 4-3-06; published 3-17-06 [FR C5-24563]

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Economic Growth and Regulatory Paperwork Reduction Act; implementation:

Prompt corrective action, etc.; burden reduction recommendations; comments due by 4-4-06; published 1-4-06 [FR 06-00012]

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Alcohol and Tobacco Tax and Trade Bureau

Alcohol, tobacco, and other excise taxes:

Small alcohol excise taxpayers; quarterly excise tax filing; cross-reference; comments due by 4-3-06; published 2-2-06 [FR 06-00980]

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Medical benefits:

Informed consent; health care professionals designation; comments due by 4-3-06; published 2-1-06 [FR E6-01218]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1287/P.L. 109–184

To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building''. (Mar. 20, 2006; 120 Stat. 292)

H.R. 2113/P.L. 109–185

To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the ''John F. Whiteside Joliet Post Office Building''. (Mar. 20, 2006; 120 Stat. 293)

H.R. 2346/P.L. 109–186

To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the ''John J. Hainkel, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 294)

H.R. 2413/P.L. 109–187

To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the ''Lillian McKay Post Office Building''. (Mar. 20, 2006; 120 Stat. 295)

H.R. 2630/P.L. 109–188

To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the ''J.M. Dietrich Northeast Annex''. (Mar. 20, 2006; 120 Stat. 296)

H.R. 2894/P.L. 109–189

To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''. (Mar. 20, 2006; 120 Stat. 297)

H.R. 3256/P.L. 109–190

To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the ''Congressman James Grove Fulton Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 298)

H.R. 3368/P.L. 109–191

To designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the ''Gagetown Veterans Memorial Post Office''. (Mar. 20, 2006; 120 Stat. 299)

H.R. 3439/P.L. 109–192

To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the ''Ava Gardner Post Office''. (Mar. 20, 2006; 120 Stat. 300)

H.R. 3548/P.L. 109–193

To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the ''Heinz Ahlmeyer, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 301)

H.R. 3703/P.L. 109–194

To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the ''Staff Sergeant Michael Schafer Post Office Building''. (Mar. 20, 2006; 120 Stat. 302)

H.R. 3770/P.L. 109–195

To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building''. (Mar. 20, 2006; 120 Stat. 303)

H.R. 3825/P.L. 109–196

To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the ''Clayton J. Smith Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 304)

H.R. 3830/P.L. 109–197

To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the ''U.S. Cleveland Post Office Building''. (Mar. 20, 2006; 120 Stat. 305)

H.R. 3989/P.L. 109–198

To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the ''Albert H. Quie Post Office''. (Mar. 20, 2006; 120 Stat. 306)

H.R. 4053/P.L. 109–199

To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the ''Lillian Kinkella Keil Post Office''. (Mar. 20, 2006; 120 Stat. 307)

H.R. 4107/P.L. 109–200

To designate the facility of the United States Postal Service

located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the ''Maryland State Delegate Lena K. Lee Post Office Building''. (Mar. 20, 2006; 120 Stat. 308)

H.R. 4152/P.L. 109–201

To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''. (Mar. 20, 2006; 120 Stat. 309)

H.R. 4295/P.L. 109–202

To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the ''Mont and Mark Stephensen Veterans Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 310)

S. 2089/P.L. 109–203

To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building''. (Mar. 20, 2006; 120 Stat. 311)

S. 2320/P.L. 109–204

To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes. (Mar. 20, 2006; 120 Stat. 312)

H.R. 1053/P.L. 109–205

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine. (Mar. 23, 2006; 120 Stat. 313)

H.R. 1691/P.L. 109–206

To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the ''John H. Bradley Department of Veterans Affairs Outpatient Clinic''. (Mar. 23, 2006; 120 Stat. 315)

S. 2064/P.L. 109–207

To designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville ''Mac'' Lawrence Post Office. (Mar. 23, 2006; 120 Stat. 316)

S. 2275/P.L. 109–208

National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Mar. 23, 2006; 120 Stat. 317)

H.R. 4826/P.L. 109–209

To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Mar. 24, 2006; 120 Stat. 318)

S. 1184/P.L. 109–210

To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member. (Mar. 24, 2006; 120 Stat. 319)

S. 2363/P.L. 109–211

To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999. (Mar. 24, 2006; 120 Stat. 320)

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