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

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

WHEN: Tuesday, August 8, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 137

Tuesday, July 18, 2006

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 71, No. 137
Tuesday, July 18, 2006

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV06–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that suspends the container regulations prescribed under the Washington apricot marketing order for the 2006 shipping season only. The marketing order regulates the handling of fresh apricots grown in designated counties in the State of Washington, and is administered locally by the Washington Apricot Marketing Committee (Committee). This relaxation of the regulations provides the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or type of container. The Committee recommended a temporary suspension of the container regulations so that it can thoroughly evaluate the impact the relaxation has on the apricot industry prior to taking any action for subsequent seasons.

DATES: *Effective Date:* Effective August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724; Fax: (503) 326–7440.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the temporary suspension of the container regulations (§ 922.306) prescribed under the order until March 31, 2007. This rule provides additional flexibility to the apricot industry by allowing handlers to pack apricots in any type, shape, or size container. The container regulations prescribed under § 922.306 will resume on April 1, 2007, for the 2007–2008 and future seasons unless the Committee recommends, and the USDA approves, action to extend the suspension. The Committee recommended a temporary suspension of the regulations rather than an open-ended suspension to help ensure that a thorough analysis of the 2006 shipping season is completed prior to any possible future action regarding the issue of container regulation suspension.

Section 922.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of apricots grown in the production area. Section 922.52(a)(3) specifically authorizes the establishment of the container regulations found in § 922.306. Section 922.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52.

Authority to regulate the size, weight, dimension and pack of containers used in the marketing of fresh apricots was included in the order when promulgated in 1957. Container regulatory authority was included in the order to provide container standardization, to enhance orderly marketing conditions, and to provide for increased producer returns. To provide the industry with needed flexibility, handlers are also authorized to make test shipments in experimental containers. When container regulations are effective, this provision (§ 922.110) allows handlers to apply to the Committee seasonally to pack and ship in containers that would otherwise not be authorized by the regulations.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of any regulatory requirements for Washington apricots that are issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews the Committee recommendations along with any supportive information submitted by the Committee, as well as information from other available resources, and determines whether modification, suspension, or termination of the

regulatory requirements would tend to effectuate the declared policy of the Act.

During such a review at its February 8, 2006, meeting, the Committee unanimously recommended suspending the container regulations for the 2006 shipping season. The Committee recommended that this rule be effective no later than June 1, 2006, to ensure that the earliest shipments of apricots benefit from the relaxed regulations.

When effective, § 922.306 provides that apricots must be handled domestically in (1) open containers or telescopic fiberboard cartons weighing 28 pounds or greater; (2) closed containers with 14 pounds or more of apricots packed in a row-faced or tray-pack configuration; (3) closed containers with 12 pounds (or more) of random sized, non row-faced apricots; or (4) closed containers with 24 pounds or more of loose-packed apricots.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Handlers report, however, that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Packaging options could also include consumer-friendly ''clam shell'' containers or other similar type containers designed to enhance the appearance of individual pieces of fruit.

This temporary suspension of the container regulations provides the industry with needed flexibility, while providing the Committee with the ability to evaluate the affect the relaxation has on the orderly marketing of the apricot crop during the 2006 shipping season.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

For the 2005 apricot shipping season, the Washington Agricultural Statistics Service has prepared a preliminary report showing that the total 5,600 ton apricot utilization sold for an average of $997 per ton. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2005 can thus be estimated at approximately $18,611. In addition, based on information from the Committee and USDA's Market News Service, 2005 f.o.b. prices ranged from $15.00 to $20.00 per 24-pound loose-pack container, and from $14.00 to $24.00 for 2-layer tray pack containers. With about half of the 2005 season fresh apricot pack-out of 4,471 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), all the industry's handlers would have averaged gross receipts of less than $750,000 from the sale of fresh apricots. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

At its February 8, 2006, meeting the Committee unanimously recommended the temporary suspension of the order's container regulations (§ 922.306). Section 922.52(a)(3) of the order specifically authorizes the establishment of container regulations. Further, § 922.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52. The temporary relaxation in the container regulations is expected to provide the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or type of container. Container regulations have been utilized in past seasons to provide a degree of standardization and thus have helped in providing the industry with orderly marketing conditions. Rapidly changing market dynamics have convinced the Committee that such standardization may no longer be necessary to ensure orderly marketing. The Committee recommended a temporary suspension so it can conduct a thorough evaluation of the impact the relaxation had on the industry during the 2006 shipping season prior to taking any further action for subsequent seasons.

The Committee anticipates that this rule will not negatively impact small businesses. This rule suspends the container requirements found under § 922.306 of the order's rules and regulations and should provide enhanced marketing opportunities. The Committee anticipates that the only additional costs this rule may have on the industry would be associated with the development and use of any new containers.

The Committee discussed alternatives to its recommendation to suspend the container regulations. Primary amongst these was the option of leaving the container regulations intact without change. After some discussion, the Committee rejected this option as being an inadequate response to the growing interest for greater flexibility in packaging. The Committee also discussed whether to recommend an indefinite suspension of the container regulations—an alternative which was rejected in favor of evaluation of the suspension's impact.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 8, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule regarding this action was published in the **Federal Register** on April 5, 2006. Copies of the rule were made available by the Committee staff to all Committee members and apricot handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period

which ended June 5, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalization of the interim final rule, without change, as published in the **Federal Register** (71 FR 16982, April 5, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922 which was published at 71 FR 16982 on April 5, 2006, is adopted as a final rule without change.

Dated: July 12, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11302 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV06–948–1 IFR]

Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2006–2007 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period begins July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

DATES: *Effective Date:* July 19, 2006. Comments received by September 18, 2006, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 2005–2006 fiscal period, an assessment rate of $0.02 per hundredweight of potatoes handled was approved by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the assessment rate for the 2006–2007 fiscal period, which begins July 1, 2006, and will continue in effect until reinstated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of $0.02 per hundredweight of Colorado potatoes handled for 2005–2006 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule suspends the $0.02 assessment rate for 2006–2007 and will remain in effect during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. In addition, the order authorizes the use of monetary reserve funds to cover program expenses (§ 948.78). The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting.

Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–2006 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.02 per hundredweight of potatoes handled. This assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 11, 2006, and unanimously recommended 2006–2007 expenditures of $20,268 and suspension of the continuing assessment rate. In comparison, last year's budgeted expenditures were $20,368. The suspension of the assessment rate will allow the Committee to draw from the reserve to cover 2006–2007 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses (§ 948.78).

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

As of July 1, 2005, the Committee had $49,237 in its reserve fund. With the 2006–2007 budget set at $20,268, the current maximum reserve permitted by the order is approximately $40,536 (approximately two fiscal periods' expenses (§ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately $15,814 from its reserve, and may additionally earn approximately $4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately $33,423. This amount would be consistent with the order's requirements.

The assessment rate suspension will continue in effect indefinitely until reinstated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this suspension of the continuing assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for reinstatement of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 8 producers and 8 handlers in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2004 fresh potato production of 557,826 hundredweight (Committee records), and the average 2004 producer price of $6.30 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately $439,288. In addition, based on Committee records and an estimated average 2004 f.o.b. price of $8.40 per hundredweight ($6.30 per hundredweight NASS producer price plus Committee estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $6,500,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule suspends the continuing assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods. Funds from the Committee's authorized reserve, along with interest and other income, will be adequate to cover budgeted expenses.

As of July 1, 2005, the Committee had $49,237 in its reserve fund. With the 2006–2007 budget set at $20,268, the current maximum reserve permitted by the order is approximately $40,536 (approximately two fiscal periods' expenses (§ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately $15,814 from its reserve, and may additionally earn approximately $4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately $33,423. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

For the 2005–2006 fiscal period, the Committee recommended a decrease in the assessment rate. However, the decreased assessment rate did not reduce the Committee's reserve as anticipated. Therefore, the Committee recommended suspending the continuing assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were considered, but not recommended because they would not reduce the reserve as quickly as suspension of the assessment rate.

This action suspends the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, suspending the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado

potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 11, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2006–2007 fiscal period begins on July 1, 2006, and the order requires that the assessment rate suspension apply to all assessable Colorado potatoes handled during such fiscal period; (2) this action relieves restrictions on handlers by suspending the assessment rate beginning with the 2006–2007 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 948.215 [Suspended]

■ 2. In part 948, § 948.215 is suspended in its entirety.

Dated: July 11, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11303 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1402

RIN 0560–AH22

Policy for Certain Commodities Available for Sale

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations of the Commodity Credit Corporation (CCC) relating to marketing procedures for commodities in CCC inventory to update agency provisions and provide for commodity sales through Internet-based marketing systems. This rule is intended to modernize and streamline CCC commodity marketing procedures.

DATES: Effective August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Overbo, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, telephone (202) 720–4647 or send e-mail to: *Mark.Overbo@wdc.usda.gov.* Persons with disabilities who require alternative means of communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

Since the enactment of the Agricultural Act of 1949, CCC's major activity has been the administration and implementation of nonrecourse loans to producers of major agricultural commodities. Generally, Congress establishes loan rates for certain commodities on a per-unit basis. Under the program's ''nonrecourse'' provisions, the producer may satisfy the loan obligation through forfeiture to CCC of the commodity pledged as collateral for the loan. As a result, CCC acquires commodities that are forfeited or delivered under these nonrecourse loans. The accumulation of stocks of these forfeited commodities requires CCC to maintain provisions for their eventual disposal. The acquisition, procurement, storage, distribution, and disposal of commodities are handled by the Farm Service Agency under the administration of the Deputy Administrator for Commodity Opeartions. The regulations at 7 CFR part 1402 contain CCC policy for certain commodities available for sale by CCC.

This rule updates the regulations regarding the dissemination of general sales offering information to reflect current CCC policies. Current regulations at 7 CFR part 1402 provide that CCC will disseminate general sales information through a ''CCC Sales List,'' published in press release or similar form, and revised and republished periodically as necessary. Methods of providing commodity sales and CCC inventory listings have improved considerably since the regulations were last updated. Currently, sales offerings are being made electronically via several sources such as CCC's Commodity Operations Web site at *http://www.fsa.usda.gov/daco/catalogs* and through other privately-maintained, fully interactive on-line sales systems. This rule replaces the provisions dealing with the publication of the CCC Sales List with the current policies and procedures for Internet posting of commodity inventories offered for sale.

Notice and Comment

The changes made in this rule are a general edit and reorganization of part 1402 as a whole, which provides how CCC will disseminate information. Thus, this rule is exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553) for publication of a proposed rule for public

notice and comment because it is a rule of agency procedure and practice.

Executive Order 12866

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

Small Business Regulatory Enforcement Fairness Act

This rule will be submitted to Congress as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*). The rule has been determined not to be a major regulatory action. Thus, the 60-day delay required by section 801 of SBREFA for Congressional review is not applicable.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rule making for the subject matter of this rule.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12612

The Federalism implications of this rule are not sufficient to warrant preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Unfunded Mandates Reform Act of 1995

This Rule contains no Federal mandates as defined in Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to sections 202 and 205 of UMRA.

Paperwork Reduction Act

There are no public information collection, reporting or recordkeeping requirements associated with this rulemaking.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects in 7 CFR Part 1402

Agricultural commodities, Price support programs, Processed commodities, Surplus agricultural commodities.

■ For the reasons set out in the preamble, 7 CFR part 1402 is revised as set forth below:

■ 1. Revise 7 CFR part 1402 to read as follows:

PART 1402—POLICY FOR CERTAIN COMMODITIES AVAILABLE FOR SALE

Sec.

Authority: 7 U.S.C. 7285, 15 U.S.C. 714b and 714c.

§ 1402.1 General.

To facilitate trade through usual and customary channels, facilities, and arrangements of trade and commerce, the Commodity Credit Corporation (CCC) will disseminate general sales offering information on the Farm Service Agency's (FSA) Commodity Operations Web site located on the Worldwide Web at *http://www.fsa.usda.gov/daco/default.htm.* The Web site will be reviewed and amended as necessary to reflect current general sales offering information. CCC will make regular amendments as necessary deleting or adding to the sales provisions or changing prices or methods of sales. The information posted at this Web site is for the purpose of public information and does not constitute an offer to sell by CCC or an invitation for offers to purchase from CCC. CCC may make its commodities available for sale without prior notification to storing warehouse operators. Information pertaining to opportunities to purchase commodities from CCC will be published on the FSA Commodity Operations Web site when such opportunities are available.

§ 1402.2 Sales of inventory.

CCC will entertain offers from prospective buyers for the purchase of any commodities owned by CCC, including those commodities that are marketed through commercial, Internet-based marketing services. Various commodities owned by CCC may be offered for sale through commercial, Internet-based marketing services. Interested parties may submit requests for information related to Internet-based commodity sales to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.3 Submission of offers, terms, and conditions.

Offers accepted by CCC will be subject to terms and conditions prescribed by CCC. These terms include, among other things, payment by wire transfer of funds, certified check or cashiers check before delivery of the commodity, removal of the commodity from CCC storage within a reasonable period of time, and in sales that require a commodity to be used for only a specific purpose, documentation that use of the commodity was for only that purpose.

§ 1402.4 Information availability.

The terms and conditions of sale with respect to commodities that are not sold through Internet-based marketing service are available online. Requests for terms and conditions may be addressed to the Director, Warehouse and Inventory Division, Stop 0553, 1400 Independence Avenue, SW., Washington, DC 20250–9860.

§ 1402.5 Late payments.

If payment is not received by CCC within the period specified in the sales contract, interest will be assessed by CCC. If a buyer fails to make arrangements for payment according to the provisions of the contract, CCC retains the right to terminate the sales contract. If CCC terminates the sales contract for default in whole or in part, CCC may offer the commodity for sale and the original party will be liable to CCC for any losses incurred and damages sustained as a result of the

party's failure to timely remit payment for the commodity.

Signed in Washington, DC, on June 29, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–11236 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 915

[No. 2006–12]

RIN 3069–AB31

Federal Home Loan Bank Elective Directors

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its rules relating to the election of Federal Home Loan Bank (Bank) directors to allow each Bank greater latitude in providing members information about the range of skills and experience among board members the Bank believes is best suited to administer its affairs. The final rule is intended to enhance the corporate governance of each Bank by allowing a Bank to provide to its members, during the election process, information about the expertise the Bank has identified as appropriate to enhance the board of directors in providing overall board management of the Bank. The final rule also revises and reorganizes the prohibitions on actions during the election process.

DATES: *Effective Date:* The final rule is effective July 18, 2006.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, General Counsel, 202–408–2983, *kennedyj@fhfb.gov;* or Thomas P. Jennings, Senior Attorney Advisor, Office of General Counsel, 202–408–2553, *jenningst@fhfb.gov.* You can send mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Congress has delegated to the Finance Board broad authority to fulfill its statutory mandates. Section 2B of the Federal Home Loan Bank Act (Bank Act) states that the Finance Board has the power ''[t]o supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of'' the Bank Act. 12 U.S.C. 1422b(a)(1).

The primary mandate for the Finance Board is to ''ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.'' 12 U.S.C. 1422a(a)(3)(A). Within this broad authority, Congress also specifically authorized the Finance Board to ''prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks.'' 12 U.S.C. 1427(d).

The Finance Board has long had in place regulations addressing the manner in which persons are nominated and elected to the boards of the Banks. Effective December 30, 1998, the Finance Board amended various provisions of its regulations relating to director elections to devolve to each Bank, through its board of directors, the responsibility for administering the process for electing Bank directors. *See* Resolution Number 1998–47, *published at* 63 FR 65683 (November 30, 1998) (available electronically in the FOIA Reading Room on the Finance Board Web site at: *http://www.fhfb.gov/Default.aspx?Page=59*). Notwithstanding that devolution of authority to the Banks, the Finance Board remains responsible for the safety and soundness of the Banks and for periodically reviewing its regulations to ensure that they continue to carry out their intended purposes in a logical and efficient manner.

The Finance Board believes that an informed and capable board of directors is one of the more important elements in maintaining a safe and sound Bank. In recent months, the Finance Board has received suggestions that the electoral process could be improved if certain provisions of its regulations were revised to permit the Banks to be more involved in the process of identifying qualified and capable individuals to serve on the boards.

Accordingly, on April 18, 2006, the Finance Board published a proposed regulation with a 45-day comment period that would amend part 915—the provision of its regulations dealing with the election of directors—to allow the Banks more flexibility in providing information to their members during the election process. Briefly stated, the proposed rule would have allowed any Bank to assess the skills and experience of the existing individuals on the board of directors, to determine what skills or experience might be useful in enhancing the capabilities of the board, and to communicate its assessment of existing and desired skills to the members when soliciting nominations from and providing ballots to the members of the Bank. The proposed rule also would have removed certain provisions of the regulations that prohibit persons associated with the Finance Board from being involved in the elections process, because those provisions dated to a time at which the Finance Board actually administered the elections at each of the Banks. *See* Resolution Number 2006–04, *published at* 71 FR 19832 (April 18, 2006) (available electronically in the FOIA Reading Room on the Finance Board Web site at: *http://www.fhfb.gov/Default.aspx?Page=59*). The final rule generally amends the various provisions of part 915 as set forth in the proposed rule.

II. Analysis of the Public Comments and Final Rule

The Finance Board received 17 comments in response to the proposed rule, which addressed the Finance Board's proposal to expand the ability of the Banks to communicate with their members during the election process and its proposal to remove prohibitions on the conduct of persons associated with the Finance Board. The commenters included 6 Banks. Most commenters supported the proposal, though almost all offered suggested revisions to the rule. Three commenters opposed the proposal, 2 citing a perceived potential for the process to further impede the ability of some members to obtain representation on the Bank boards of directors, and 1 expressing a concern about the possible bias in the information to be provided to the members as well as the perception created by the deletion of prohibitions barring the involvement of Finance Board employees in the elections process. The comments can be divided into 6 substantive areas, which are discussed separately below.

A. Self-Assessments Under § 915.9(a)

Section 915.9(a) of the proposed rule would have allowed the board of directors of each Bank to conduct an annual assessment of the skills and experience needed on the board of directors and to inform its members of those identified needs. The final rule adopts this provision substantially as proposed.

Section 915.9(a) of the final rule is permissive in nature—it authorizes, but does not require, a board of directors to assess how well the skills and experience of the incumbent board members align with the needs of the Bank. It also authorizes, but does not require, a board to determine whether it could benefit from the addition of

persons with particular skills or experience and, if so, whether to provide the members with that information in advance of the nominations and voting process. The Finance Board believes that the board of directors of a Bank, as the body charged by Congress to ''administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member,'' 12 U.S.C. 1427(j), is the most appropriate body to oversee the self-assessment. The final rule does not prescribe the process or the procedures through which the board of directors is to conduct a self-assessment of its needs, although it vests ultimate responsibility for these decisions with the board. Thus, the rule would allow a board of directors to consult with the members or with management in assessing what skills and experience would be of most use to the board.

Although the rule includes a list of skills and experience as part of § 915.9(a), it is intended only as an example of the types of skills that a Bank might determine it needs on its board of directors. A board may well decide that it could benefit from the addition of persons with other skills, and it could include those skills as part of its assessment. Indeed, because the business plans of the Banks vary, the needs of the individual Banks with respect to the skill sets of the boards as a whole also will likely vary. The rule is intended to allow each Bank adequate flexibility to determine its own particular needs.

The commenters addressed several issues relating to the assessment of director skills and experience. Some commenters suggested that the rule include a more expansive list of skills, while others were concerned that identifying specific skills in the rule might make it more difficult for the chief executive officer of a member—who may have a broad range of business and financial skills, rather than the individual skills listed—to be nominated or elected. Because the list of skills is intended to be illustrative rather than exclusive, the Finance Board does not believe that the list needs to be expanded. In a similar fashion, the Finance Board believes that the concerns about chief executive officers being handicapped in their ability to be nominated or elected are not well-founded. The rule does not affect the ability of a member to nominate a person of its choosing, and any member can nominate its own officers or directors. The rule also does not limit the right of a member to vote for whomever it believes to be the best qualified, regardless of whether that person possesses the qualifications identified by the assessment. Moreover, because all elected directors must either be an officer or a director of a member of the Bank, it is likely that the list of nominees will continue to include a significant number of persons who serve as chief executives of their institution.

Other commenters questioned the need or usefulness of the rule, contending that there is no need for such a rule because such assessments are not barred by statute or regulation, it would allow certain members to perpetuate their representation on the board, or would be unlikely to produce better candidates than are nominated under the current structure.

Although it is correct that there are no statutory or regulatory impediments to conducting a self-assessment, the final rule responds to concerns expressed by some parties that the rules be amended to state more clearly that such actions are permissible. Moreover, certain provisions of the existing regulations—§§ 915.6 and 915.8—do regulate the content of the notice that the Banks provide to their members regarding nominations, which starts the election process, as well as the content of the ballots. Given both of those facts, the Finance Board believes that it is appropriate to include these new provisions as part of the rules that already address communications with the members during the elections process. Moreover, such provisions will ensure—for those Banks that undertake the assessment and inform their members of the desired skills and experience—that members receive the information at a time when it can assist them in deciding who they may want to nominate.

As to the concern about a self-perpetuating board, the Finance Board notes that all directors not only have a statutory duty to act fairly and impartially to all members, as set forth in 12 U.S.C. 1427(j), but also a fiduciary duty as representatives of the members. The Finance Board believes that any conduct by a director that placed the interests of the individual director or the director's institution above the interests of the Bank likely would violate both of those duties and would be sanctioned accordingly.

The Finance Board acknowledges, as suggested by the comments, that the process of assessing the qualifications of the board as a whole and identifying the needs of a Bank will not by itself result in the election of a more qualified board. The objective of the rule, however, is to provide both the Banks and their members an avenue through which they may improve the quality of the boards. The Finance Board believes that key factors in achieving that result include information as to the needs of the Bank's board and information as to the qualifications of the nominees for the directorships. To the extent that the collective skills and experience of a Bank's board of directors may not align precisely with the needs of the Bank despite efforts to achieve that result, the board of directors still would retain the authority to hire consultants to advise it in any areas where the collective skills of the board members may be less than optimum. The Finance Board believes that a Bank should do all that it reasonably can to obtain a well-performing board of directors, even if those efforts are not guaranteed to succeed every time.

Other commenters suggested that the Finance Board allow members a greater role in conducting the self-assessment, allow Banks to form nominations committees composed of Bank directors and other representatives from members, and allow management to work with the board in the nominations and election process. As noted previously, by statute the board of directors of each Bank is charged with responsibility for administering the affairs of the Bank and the Finance Board believes that the board is the appropriate body to determine what skills and experience are most likely to enhance its ability to carry out its duties. Moreover, the suggestions that the final rule allow the establishment of nominations committees and the greater involvement of management in the nominations process go beyond the scope of the proposed rule. The proposal was intended to allow an opportunity for the Banks to develop and then provide to the members additional information regarding the needs of the boards and the skills and experience of individual candidates seeking election to the board. It was not intended to alter the substantive nature of the nominations process, which is tied closely to the statutory provisions that authorize the members, and not the Bank, to nominate persons to stand for election to the boards of the Banks. Accordingly, the final rule does not include provisions addressing the issues raised by those commenters. As the party responsible for conducting the assessment, the board also has the authority to determine what resources, if any, it needs in order to conduct any self-assessment. Clearly, Bank management works for the board of directors and, if so directed by the board, can undertake tasks to aid the board in doing the self-assessment.

B. Information at the Nominations Stage—§ 915.6(a)(3)

Proposed § 915.6(a)(3) would have authorized each Bank to send to the members, as part of the initial notice for nominations, a brief statement of the skills and experience that the Bank's board of directors has identified. The final rule adopts the substance of § 915.6(a)(3) as proposed with clarifying changes to the language used.

Some commenters raised concerns about providing the members with such information at the start of the nominations process, including concerns that the information might steer nominations to a preferred candidate, or that it might cause persons with other qualifications not to be nominated, and suggested that the rule explicitly state that a member can nominate any eligible person without regard to whether that person has the experience identified by the Bank.

As to the timing concern, the purpose of the rule is to allow both the Bank and its members to be better informed about the needs of the Bank at the board level and the qualifications that prospective nominees might bring to the board. If a Bank opts to undertake the self-assessment, the Finance Board believes that it is better for the members to receive the information at the beginning of the election process, before nominations are due. Accordingly, the final rule retains the provision allowing the information to be made available to the members prior to the submission of nominations.

With respect to the concern about steering nominations, the Finance Board does not believe that the risks of that occurring are significant. As an initial matter, the information provided to the members will relate only to the needs of the Bank; it will not be specific to any individuals and should not cause any member to fail to nominate an individual the member believes is an appropriate candidate. Moreover, each member has a legal right to nominate any eligible person, without regard to whether the person possesses the skills or experience identified by the Bank. Having directors who meet the eligibility requirements is a minimum standard, while having directors with the skills and experience identified by the Banks is a goal to which the Banks would aspire.

Commenters suggested that the rule require a Bank to include with the statement identifying the needed skills and experience a statement that a member may nominate any otherwise eligible persons. Existing Finance Board rules already include a provision stating that any member eligible to vote in an election may nominate persons for that election. Consequently, the Finance Board does not believe such a revision to the final rule is necessary and has not adopted that suggestion.

Some commenters suggested that the final rule prescribe how a Bank must describe the identified skills and experience in any communication sent to the members, while others sought revisions to clearly state that only the board of directors can decide what information to include in the initial notice. Because the current regulations at 12 CFR 915.6(a) provide that ''a Bank'' must provide the notice to the members, the Finance Board views the preparation and sending of the notice as a ministerial function which is subject to the oversight of a Bank's board of directors, which can determine how much, or how little, involvement to have. Moreover, § 915.3(a) of the Finance Board regulations requires the disinterested directors, or a committee thereof, to provide the oversight with respect to the election of directors. The Finance Board views this provision as requiring that the disinterested directors carry out the details of providing the information to the members. Proposed § 915.6(a)(3) would require that the statement of skills be brief and that it be a statement of the skills identified pursuant to § 915.9, which are the skills identified by the board of directors. Prescriptive regulation should not be necessary in order to assure that the skills identified by the boards of directors are indeed described accurately and briefly, if at all, in the initial notice to members.

C. Information Accompanying the Ballots—§ 915.8(b).

Proposed § 915.8(b) would have allowed each Bank to send with the ballots a brief statement of the skills and experience that the Bank's board of directors has identified as needed on the board. The Finance Board has retained that provision in the final rule with some clarifying changes.

The Finance Board received comments similar to those made with respect to the initial notice under proposed § 915.6(a)(3). The Finance Board believes that its response to the comments on the initial notice are equally applicable to the similar comments on proposed § 915.8(b). The Finance Board also received comments raising other issues, including a request that the final rule authorize the Banks to form a nominations committee. One commenter recommended that the committee be permitted to make nominations, while the other suggested that the committee make recommendations to members, but allow the members to decide whether to nominate those persons. These commenters would allow the Banks to endorse particular candidates or to provide information in the form of a proxy statement that contains information about the candidates and the Bank's recommendations or endorsements of specific individuals.

The Finance Board is not prepared to expand the final rule to incorporate the recommendations made by these commenters. As an initial matter, the suggestions relating to nominations committees and proxy statements go beyond the scope of the changes at the heart of the proposed rule, which were intended to allow the Banks to provide greater information to members about the needs of the Banks and the experience of the prospective directors. They were not intended to alter the nature of the nominations process, which each of those suggestions would do to some degree. Those suggestions also raise questions as to the legal limits on what type of changes to the nominations and election process would be permissible under the Bank Act, which the Finance Board has not addressed in the proposed rule. Moreover, since 1989, Finance Board rules have prohibited Bank personnel (other than incumbents acting in their personal capacity) from communicating that the Bank endorses specific individuals. In light of that history and the policy reasons underlying it, the Finance Board declines to go beyond authorizing the disclosures set forth in the final rule.

Two commenters requested that the final rule prevent a Bank from altering the statement that it provides to its members between the initial distribution with the nominations announcement and the subsequent distribution of the ballots. Those persons were concerned that in the absence of such a provision a Bank would be free to change its directorship needs assessment for the purpose of directing votes to particular candidates. In the preamble to the proposed rule, the Finance Board stated that the two statements are not required to be the same. See 71 FR at 19834.

Although the Finance Board believes that in most situations there would be no reason to change the information from one communication to the next, it is possible that events could occur after the initial distribution that could cause the initial communication to no longer be full, complete, or accurate. For example, directors could resign or become ineligible to serve between the

time of nominations and the election, thus creating a need that was not apparent when the Bank distributed the results of the assessment to its members at the nominations stage of the process. If such an event were to occur, the Finance Board believes that the board of directors should be able to provide its members with a revised statement of the most current skills assessment by the board, and the Finance Board is revising the rule accordingly. The Finance Board also is revising the final rule to require each Bank to explain to its voting members why any changes to the statement are warranted.

The Finance Board recognizes that, for purposes of the elections occurring this year, it is likely that the Banks will not have included the results of a self-assessment with the nominations notice previously sent to the members. If any Bank has conducted a self-assessment prior to the distribution of the ballots, the Finance Board believes that the Bank and its members should be able to benefit from that effort. Accordingly, the Finance Board will permit any such Banks to include the results of their assessment with the ballots that it provides to its members. We anticipate that in subsequent years the Banks that choose to conduct a self-assessment and inform their members of that action will do so sufficiently in advance of the start of the nominations process to allow the inclusion of those materials with the nominations materials as well as with the ballots.

D. Ballot Information About the Nominees—§ 915.8(a).

Proposed § 915.8(a)(1) would have authorized the Banks to include on the ballots a brief description of each nominee's skills and experience. Like the authorizations in proposed §§ 915.6(a) and 915.8(b) with respect to information that could be included in the initial notice and with the ballots, such information would be permitted, but is not required to be on the ballots.

Several commenters suggested revisions to the provisions addressing the information that may be provided on the ballots. Some suggested that the final rule prescribe how such information would be obtained and displayed on the ballots; others suggested that only the board of directors be permitted to decide how to describe a nominee's skills and experience, while others would allow each nominee to describe his or her skills and experience. Three commenters opposed any such statement on the ballots, believing that it could not be done in a purely neutral fashion.

The Finance Board believes that the Banks, under the oversight of their disinterested directors and through the use of resources available to them, have the capability to obtain information on each candidate's skills and experience and to prepare a brief statement of such skills and experience, should they choose to do so. The intent of the proposed and final rule is to afford the Banks the opportunity to provide certain information to the members at various stages of the electoral process, but not to require that they do so. Given that the rule is not mandatory, and that the disinterested directors of the Banks already administer the elections, the Finance Board does not believe that it is necessary for the final rule to impose the level of detail that these comments suggest. The Finance Board, therefore, is adopting the language in § 915.8(a) substantially as proposed, but is adding a new sentence to clarify that even though other provisions on the ballots are mandatory, the inclusion of the candidates' skills and experience is at the discretion of each Bank's disinterested directors.

E. Finance Board Involvement in the Election Process—§ 915.9(b) and (c)

Proposed § 915.9 would have reorganized the prohibitions in current § 915.9 and authorized the board of directors of a Bank to assess its current and needed skills. Part of this reorganization would delete the prohibitions in current § 915.9(a)(1), which bar persons associated with the Finance Board from being involved in the elections process. As explained in the preamble to the proposed rule (see 71 FR at 19834), the Finance Board believes that these prohibitions are no longer necessary, because the Finance Board no longer administers the elections, as it did when these prohibitions were implemented.

Several comments expressed concern that removing the prohibitions would allow the Finance Board to become more involved in the election process. Other commenters expressed a similar concern that removal of the prohibition reflected a desire by the Finance Board to become more involved in the election process. On the other hand, another commenter suggested that the Finance Board remove all the prohibitions that limit the ability of other persons and entities to become involved in the elections process.

As noted above, the prohibition on involvement by Finance Board personnel in the elections process ceased to have any significant effect on the administration of elections when the Finance Board devolved that responsibility to the individual Banks. Nevertheless, because some commenters believe that removal of the prohibition would allow or encourage Finance Board involvement in the election of directors, the Finance Board has accepted their suggestion that the prohibitions on the conduct of Finance Board directors, officers, attorneys, employees, and agents not be removed. The final rule revises proposed § 915.9(c) to make the prohibition applicable to both Bank and Finance Board directors, officers, attorneys, employees, and agents.

F. Adequate Representation.

Four commenters, 2 representing community banks and 2 representing credit unions, expressed concern that the proposed rule might adversely affect the ability of smaller members to have an adequate voice on the boards of directors of the Banks. In general, these commenters expressed a desire that the Finance Board take action that would enable more ''minority'' members to be represented on the boards of directors of the Banks, and expressed the view that the rule is likely to hinder the ability of such members to be represented on the boards.

As an initial matter, adding provisions to the final rule to address the type of issues raised by these commenters, i.e., whether the interests of all members are equally represented on the boards of directors of the Banks, would go well beyond the scope of the proposed rule. The purpose of the proposed rule was to authorize a process through which the Banks could take certain actions to provide members with additional information to allow them to improve the quality of their boards of directors, if they so choose. The purpose was not to allocate representation on the boards of the Banks to particular segments of the membership base.

Moreover, the Finance Board is not persuaded that the proposed rule, in and of itself, will have the effect perceived by those commenters, who have not offered any factual basis to support their concerns. The board structure of the Banks is set by statute, as are the voting rights of the members, which in certain respects already favor the smaller members. For example, the Bank Act limits the number of votes that each member may cast in an election to the average number of shares of stock required to be held by all members located in that state. 12 U.S.C. 1227(b). The effect of that provision is to disenfranchise the largest members of a Bank; to the extent that they own shares in excess of the average, those shares

have no voting rights. Smaller members are not affected by that limitation. While it may be true that at some Banks certain segments of the membership base do not have representatives from their industry on the boards of the Banks, that result reflects the fact that the Banks are cooperatives and operate with a board structure and voting rights that have been set by statute. If, as the Finance Board hopes, the final rule will facilitate a process wherein the members can nominate and vote for candidates who possess skills and experience needed by the Bank to carry out its housing finance mission in a safe and sound manner, then the interests of all members should benefit.

III. Effective Date

Pursuant to 5 U.S.C. 553(d)(3), the Finance Board has found that ''good cause'' exists to have the final rule take effect immediately upon publication in the **Federal Register**. First, the rule requires no mandatory actions on the part of the Banks. The rule authorizes the Banks to take actions during the election process, but it does not require that those actions be taken. Thus, no Banks are required to take any steps to prepare for the effective date of the final rule.

Second, now is the time when most Banks begin their yearly election process. Some Banks already may have started the process by sending their first notice to the members. Having an effective date immediately upon publication in the **Federal Register** will give the Banks more of an opportunity to use the provisions of the final rule in this year's election process than they otherwise would have.

Third, § 915.9(b) and (c) removes prohibitions on certain conduct. This rule will not require any preparation efforts on the part of the Banks in order to adjust to the rule being in effect.

IV. Paperwork Reduction Act

The final rule will have no substantive effect on any collection of information covered by the Paperwork Reduction Act of 1995 (PRA). See 44 U.S.C. 3501 et seq. Therefore, the Finance Board has not submitted this rule to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The final rule will apply only to the Banks, which do not come within the meaning of ''small entities'' as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 915

Banks, Banking, Conflict of interests, Elections, Federal home loan banks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 915, as follows:

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT AND ELECTIONS

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

■ 2. Amend § 915.6, by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, adding a new paragraph (a)(3), and revising redesignated paragraph (a)(4) to read as follows:

§ 915.6 Elective director nominations.

(a) * * *

(3) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by § 915.9 and the Bank has elected to provide the results of the assessment to the members;

(4) An attachment indicating the name, location, and FHFB ID number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled in the election, as determined in accordance with § 915.5; and

* * * * *

■ 3. Amend § 915.8, by revising paragraph (a), redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively, and adding a new paragraph (b) to read as follows:

§ 915.8 Election process.

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 915.7(a), a Bank shall prepare a ballot for each voting State for which an elective directorship is to be filled and shall mail the ballot to all members within that State that were members as of the record date.

(1) A ballot shall include at least the following provisions:

(i) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and FHFB ID number of the member each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(ii) A statement that write-in candidates are not permitted; and

(iii) A confidentiality statement prohibiting the Banks from disclosing how a member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each individual nominee.

(b) *Statement on skills and experience.* If a Bank has conducted an annual assessment permitted by § 915.9 and has included the results of the assessment as part of the notice to members required by § 915.6(a), it may include with each ballot a statement regarding the types of skills and experience the Bank has determined are most likely to add strength to the board of directors. If the statement differs from the statement provided under § 915.6(a)(3), the Bank also shall include an explanation of why the statements differ.

* * * * *

■ 4. Revise § 915.9 to read as follows:

§ 915.9 Actions affecting director elections.

(a) *Banks.* Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of persons with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of persons with particular qualifications, such as in financial management, accounting, hedging, risk management, capital markets, securities laws, or housing finance, it may identify those qualifications and so inform the members as part of the announcement of elections.

(b) *Incumbent Bank directors.* A Bank director acting in his or her personal capacity may support the nomination or election of any person for an elective directorship, provided that no such director may purport to represent the views of the Bank or its board of directors in doing so.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, no director, officer, attorney, employee, or agent of a Bank or the Finance Board may:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports the nomination or election of a particular person for an elective directorship; or

(2) Take any other action to influence votes for a directorship.

§ 915.16 [Amended]

■ 5. Amend the last sentence of § 915.16(e) by revising the reference ''§ 915.8(e)'' to read ''§ 915.8(f)''.

§ 915.17 [Amended]

■ 6. Amend the last sentence of § 915.17(b)(1) by revising the reference ''§ 915.8(b)'' to read ''§ 915.8(c)''.

Dated: July 12, 2006.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E6–11306 Filed 7–17–06; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM349; Special Conditions No. 25–319–SC]

Special Conditions: Dassault Aviation Model Falcon 900EX and Falcon 2000EX Airplanes; Enhanced Flight Visibility System (EFVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for certain Dassault Aviation Model Falcon 900EX and Falcon 2000EX airplanes. These airplanes will have an advanced enhanced flight visibility system (EFVS). The EFVS is a novel or unusual design feature which consists of a head up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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.

DATES: The effective date of these special conditions is July 7, 2006. We must receive your comments by September 1, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM349, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM349. 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: Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has previously been subject to the public comment process. These particular special conditions were recently issued and only three non-substantive comments were received during the public comment period. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending 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 about these special conditions. You can inspect the docket 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 preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by 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 these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us 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

On August 18, 2004, Dassault Aviation applied for an amendment to the type design for the installation and operation of an infrared enhanced flight visibility system (EFVS) on Model Falcon 900EX airplanes with modification M3083 installed, and Model Falcon 2000EX airplanes with modification M1691 installed. Commercially, these airplanes are identified as the Falcon 900EX EASy and the Falcon 2000EX EASy. In this document, all references to Falcon 900EX EASy and Falcon 2000EX EASy airplanes mean airplanes with the applicable modification installed. The original type certificate for the Model Falcon 900EX airplane is A46EU, revision 13, dated February 27, 2006. The original type certificate for the Model Falcon 2000EX airplane is A50NM revision 3, dated September 21, 2004.

The Dassault Aviation Model Falcon 900EX and Falcon 2000EX are transport category airplanes that operate with a crew of two. The Model Falcon 900EX has a wing span of 63 feet 5 inches, a length of 66 feet 4 inches, a maximum takeoff gross weight of 48,300 pounds, is powered by three Allied Signal Engines TFE 731–60–1C turbofan engines, and has a maximum range of 4,500 nautical miles. The Model Falcon 2000EX airplane has a wing span of 63 feet 5 inches, a length of 66 feet 4 inches, a maximum takeoff gross weight of 41,300 pounds, is powered by two Pratt & Whitney Canada Model PW308C turbofan engines, and has a maximum range of 3,800 nautical miles.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA intent is that the pilot will be able to use a combination of the information seen in the image and the natural view of the outside scene seen through the image, as

safely and effectively as a pilot compartment view without an EVS image that is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term ''enhanced vision system'' (EVS) has been commonly used to refer to a system comprised of a head-up display, imaging sensor(s), and avionics interfaces that displayed the sensor imagery on the head up display (HUD) and overlaid it with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems which displayed the sensor imagery, with or without other flight information, on a head down display. To avoid confusion, the FAA created the term ''enhanced flight visibility system'' (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular the requirement for a HUD and specified flight information—and can be used to determine ''enhanced flight visibility.'' EFVSs can be considered a subset of systems otherwise labeled EVSs.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions No. 25–180–SC, which approved the use of an EVS on Gulfstream Model G–V airplanes. Those special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule will allow the use of EFVSs for operation below the minimum descent altitude (MDA) or decision height (DH) to meet new visibility requirements of § 91.175(l). The purpose of these special conditions is not only to address the issue of the ''pilot compartment view,'' as was done by Special Conditions No. 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Dassault Aviation must show that the Model Falcon 900EX and Falcon 2000EX airplanes, as modified, comply with the regulations in the U.S. type certification basis established for those airplanes. The U.S. type certification basis for the airplanes is established in accordance with §§ 21.21 and 21.17, and the type certification application date. The U.S. type certification basis for the Model Falcon 900EX airplanes is listed in Type Certificate Data Sheet No. A46EU, revision 13, dated February 27, 2006, which covers all variants of the Model Falcon 900 airplanes, including the Falcon 900EX EASy. The U.S. type certification basis for the Model Falcon 2000EX airplanes is listed in Type Certificate Data Sheet No. A50NM, revision 3, dated September 21, 2004, which covers all variants of the Model Falcon 2000 airplanes, including the Falcon 2000 EX EASy.

In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. Also, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25 as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Model Falcon 900EX and Falcon 2000EX, modified by Dassault Aviation, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Aviation Model Falcon 900EX EASy and Falcon 2000EX EASy airplanes 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.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for those models 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.

Novel or Unusual Design Features

The Dassault Aviation Model Falcon 900EX EASy and Falcon 2000EX EASy airplanes will incorporate an EFVS, which is a novel or unusual design feature. The EFVS is a novel or unusual design feature because it projects a video image derived from a forward-looking infrared (FLIR) camera through the HUD. The EFVS image is projected in the center of the ''pilot compartment view,'' which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify ''visual references for the intended runway'' [see § 91.175(l)(3)] to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flightcrew and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that

only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.*, the ability to see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Therefore, safety standards are needed for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773, Pilot compartment view, specifies that ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *.'' In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot to see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D (''Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements,'' dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that would aid the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
- Display an image that the pilot can use to detect and identify the ''visual references for the intended runway'' required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.*, 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

- The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).
- The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene seen through the image as safely and effectively as the pilot would use a pilot compartment view without an EVS image that is compliant with § 25.773. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (*e.g.*, jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to Dassault Aviation Model Falcon 900EX airplanes with modification M3083 installed (Falcon 900EX EASy) and Model Falcon 2000EX airplanes with modification M1691 installed (Falcon 2000EX EASy). Should Dassault Aviation apply at a later date for an amendment to the type design to modify any other model included on Type Certificates No. A46EU or A50NM to incorporate the same novel or unusual design feature, the special conditions would apply to those models as well.

Conclusion

This action affects only certain novel or unusual design features on Dassault Aviation Model Falcon 900EX EASy and Falcon 2000EX EASy airplanes modified by Dassault Aviation. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the

certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 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 Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 900EX airplanes with modification M3083 installed (Falcon 900EX EASy) and Model Falcon 2000EX airplanes with modification M1691 installed (Falcon Model 2000EX EASy).

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (e.g. noise, ''burlap'' overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high workload phase of flight (e.g., low visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols—which are spatially referenced to the pitch scale, outside view and image—must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. There may be airplane attitudes or cross-wind conditions which cause certain symbols (*e.g.*, the zero-pitch line or flight path vector) to reach field of view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance which makes the pilot aware that they are no longer displayed conformally (for example, ''ghosting'').

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. These tasks include the following:

a. Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Compliance with these special conditions will enable the EFVS to be used during instrument approaches in accordance with § 91.175(l) such that it may be found acceptable for the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enabling the pilot to determine that there is sufficient ''enhanced flight visibility,'' as required by § 91.175(l)(2), for descent and operation below minimum descent altitude/decision height (MDA)/(DH).

c. Enabling the pilot to use the EFVS imagery to detect and identify the ''visual references for the intended runway,'' required by § 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above touchdown zone elevation.

5. Use of EFVS for instrument approach operations must be in accordance with the provisions of § 91.175(l) and (m). Appropriate limitations must be stated in the Operating Limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on July 7, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11367 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24243; Airspace Docket No. 06–AWP–11]

Revocation of Class D Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action revokes the Class D airspace area for Elko Municipal-J.C. Harris Field, Elko, NV. The FAA is taking this action due to the closure of the Elko Municipal Airport Traffic Control Tower (ATCT).

DATES: *Effective Date:* 0901 UTC October 26, 2006.

Comment Date: Comments for inclusion in the Rules Docket must be received on or before August 17, 2006.

ADDRESSES: Send comments on this direct final rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25243/ Airspace Docket No. 06–AWP–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket final rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The

Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, AWP–520, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: Airport Traffic Control Tower services are no longer available at Elko Regional Airport. Therefore, under Federal regulation, the airport no longer qualifies for Class D airspace. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9N dated September 1, 2005 and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in the document will be subsequently removed in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25243/Airspace Docket No. 06–AWP–11.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

AWP NV D Elko, NV

Elko Municipal-J.C. Harris Field, NV.
Remove.

Issued in Los Angeles, California, on July 13, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–6282 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23902; Airspace Docket No. 06–AGL–01]

Modification of Class E Airspace; Fremont, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fremont, MI. Standard Instrument Approach Procedures have been developed for Fremont Municipal Airport, Fremont, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action

increases the area of the existing controlled airspace for Fremont, MI.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA, Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 11, 2006, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fremont, MI (71 FR 18254). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fremont, MI, to accommodate aircraft executing instrument flight procedures into and out of Fremont Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 1069(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Fremont, MI [Revised]

Fremont Municipal Airport, MI
(Lat. 43°26′21″ N., long. 85°59′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Fremont Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois, on June 27, 2006.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 06–6283 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25252; Airspace Docket No. 06–AWP–12]

Revocation of Class E2 Surface Area; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action revokes the Class E2 Surface Area airspace for Elko Municipal-J.C. Harris Field, Elko, NV. The FAA is taking this action due to the closure of the Elko Municipal Airport Traffic Control Tower (ATCT).

DATES: *Effective Date:* 0901 UTC October 26, 2006. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 17, 2006.

ADDRESSES: Send comments on this direct final rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25252/ Airspace Docket No. 06–AWP–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the direct final rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, SWP–520, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: Airport Traffic Control Tower services are no longer available at Elko Regional Airport. Therefore, under Federal regulation, the airport no longer qualifies for Class E2 Surface Area. Class E2 Surface Area Designations are published in paragraph 6000 of FAA Order 7400.9N dated September 1, 2005 and effective September 16, 2005, which is incorporated by reference in 14 CFR 711. The Class D airspace designation listed in this document will be subsequently removed in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close

of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25252/Airspace Docket No. 06–AWP–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 6000 Class D airspace.

* * * * *

AWP NVE2 Elko, NV

Elko Municipal-J.C. Harris Field, NV.
Remove.

Issued in Los Angeles, California, on July 13, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–6281 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rule Implementing the Mine Improvement and New Emergency Response Act of 2006

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is adopting an interim rule to implement the Mine Improvement and New Emergency Response Act of 2006, or MINER Act, which amended the Mine Act to improve the safety of miners and mining. The MINER Act provides for Commission review of disputes arising over the accident response plans of underground coal mine operators. The interim rule establishes procedures for the submission and consideration of such disputes. The Commission invites public comments on the interim rule.

DATES: The interim rule takes effect on July 18, 2006. The Commission will accept written and electronic comments received on or before August 17, 2006.

ADDRESSES: Written comments should be mailed to Thomas A. Stock, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state ''Comments on Rule Implementing the MINER Act'' in the subject line and be sent to *tstock@fmshrc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas A. Stock, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2006, President George W. Bush signed into law the Mine Improvement and New Emergency Response Act of 2006, Public Law 109–236, 120 Stat. 493 (2006) (the ''MINER Act''), which amended the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (2000) (the ''Mine Act''). Section 2 of the MINER Act amends section 316 of the Mine Act (30 U.S.C. 876) by adding a new section (b), entitled ''Accident Preparedness and Response.'' Section 316(b)(2)(A) requires that, within 60 days of enactment, each underground coal mine operator adopt an accident response plan for each mine. Section 316(b)(2)(B) requires plans to provide for the evacuation of all persons in a mine emergency, and the ''maintenance'' of persons trapped underground who are unable to be evacuated. Under section 316(b)(2)(C), all plans are subject to review and approval by the Secretary of Labor, and must ensure that miners receive protection consistent with existing standards; take into account the most recent credible scientific research; use feasible, commercially available technology; be tailored to the specific physical characteristics of the mine; and reflect mine safety improvements gained from experience under the Mine Act and other worker safety and health laws. Section 316(b)(2)(D) directs the Secretary to review plans at least every 6 months. Sections 316(b)(2)(E) and (F) set forth plan content requirements, including a provision allowing the Secretary to require additional plan provisions as deemed necessary.

Section 316(b)(2)(G), entitled ''Plan Dispute Resolution,'' provides for Commission review of plan disputes. Section 316(b)(2)(G)(i) requires the Commission to resolve disputes arising between operators and the Secretary over plan contents on an expedited basis. Section 316(b)(2)(G)(ii) provides that when a dispute arises, the Secretary shall issue a citation which will be referred immediately to the Commission, whereupon the parties will have 15 days within which to submit to the Commission any materials relevant to the dispute. Within 15 days of the receipt of any such materials, a Commission Administrative Law Judge shall issue a decision, which may include an order staying the effect of the disputed plan provision while an appeal is taken. Section 316(b)(2)(G)(iii) provides that any party adversely affected by a Judge's decision may pursue an appeal to the Commission or courts as provided in the Mine Act.

The purpose of the interim rule is to implement section 316(b)(2)(G), providing for Commission hearings and appellate review of plan disputes. The Commission has chosen to establish an interim rule because it is needed to effectuate the MINER Act.

Explanation of Provisions

The Commission's interim Procedural Rule 24, in subparagraph (a), requires that the Secretary refer to the Commission any citation issued when a dispute arises over the content of an underground coal mine operator's accident response plan. In keeping with the requirement of section 316(b)(2)(G)(i) of the MINER Act that any such dispute be adjudicated on an expedited basis, subparagraph (a) requires the Secretary to refer to the Commission any accident plan citation within one business day of its issuance.

Subparagraph (b) provides that the referral of an accident plan citation shall consist of a notice of plan dispute, which is analogous to a notice of contest made under section 105(d) of the Mine Act, 30 U.S.C. 815(d). It further specifies the contents of a notice of plan dispute. Upon the filing of such a notice, the Commission shall assign the notice a docket number, and the Chief Administrative Law Judge shall promptly assign the case to a Judge.

Subparagraph (d)(2) affords the parties in an accident plan dispute the opportunity for a hearing before a Commission Administrative Law Judge, either at the request of a party or by order of the Judge. Although the MINER Act does not explicitly provide for hearings on accident plan disputes, section 105(d) of the Mine Act requires the Commission to afford an opportunity for a hearing on any notice of contest. 30 U.S.C. 815(d).

Section 316(b)(2)(G)(iii) of the MINER Act states that when a Judge's decision in an accident plan dispute is appealed, the disputed provision in the plan will take effect unless a party asks the Judge to stay its effect pending any appeals, and the Judge grants such relief. Subparagraph (e)(1) of interim Rule 24 implements this provision and provides that a Judge's decision shall include a ruling on any such stay motion.

Notice and Public Procedure

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (''APA'') do not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on the interim rule in order to assist the Commission in its deliberations regarding the adoption of a permanent rule. The Commission will accept public comments until August 17, 2006.

The Commission has determined that this rule is not subject to the Office of Management and Budget (''OMB'') review under Executive Order 12866, 58 FR 51735, September 30, 1993.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because this rule does not contain any information collection requirements that require the approval of the OMB.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 on an interim basis to add Commission Procedural Rule 24 (29 CFR 2700.24) as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.24 is added to subpart B to read as follows:

§ 2700.24 Accident response plan dispute proceedings.

(a) *Referral by the Secretary.* The Secretary shall immediately refer to the Commission any citation arising from a dispute between the Secretary and an operator with respect to the content of the operator's accident response plan, or any refusal by the Secretary to approve such a plan. Any referral made pursuant to this subsection shall be made within one business day of the issuance of any such citation.

(b) *Contents of referral.* A referral shall consist of a notice of plan dispute describing the nature of the dispute; a copy of the citation issued by the Secretary; a short and plain statement of

the Secretary's position with respect to any disputed plan provision; and a copy of the accident response plan indicating all disputed and agreed-upon provisions.

(c) *Filing and service of pleadings.* Filing with the Commission of any document in an accident response plan dispute proceeding is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be expeditiously served on all parties, such as by personal delivery, including courier service, by express mail, or by facsimile transmission.

(d) *Submission of materials.*

(1) Within 15 calendar days of the referral, the parties shall submit to the Judge assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a motion for any relief sought, including any request to stay the effect of a disputed provision pending any appeal taken pursuant to paragraph (f) of this section, and may include proposed findings of fact and conclusions of law. Such materials may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated.

(2) *Hearing.*

(i) Within 5 calendar days following the Secretary's referral, any party may request a hearing and shall so advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the other parties.

(ii) Within 5 calendar days following the Secretary's referral, the Commission's Chief Administrative Law Judge or his designee may issue an order scheduling a hearing on the Judge's own motion, and must immediately so notify the parties.

(iii) If a hearing on the referral is requested or ordered, the hearing shall be held within 15 calendar days of the referral. The scope of a hearing on an accident response plan dispute referral is limited to the disputed plan provision or provisions. If no hearing is held, the Judge assigned to the matter shall review the materials submitted by the parties pursuant to paragraph (d)(1) of this section, and shall issue a decision pursuant to paragraph (e) of this section.

(e) *Decision of the Judge.*

(1) Within 15 calendar days following receipt by the Judge of all submissions and testimony made pursuant to paragraph (d) of this section, the Judge shall issue a decision that constitutes the Judge's final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. The decision shall include a ruling, if a party has so moved, on whether inclusion of the disputed provision in the plan shall be limited, and its effect stayed, by any appeal taken pursuant to paragraph (f) of this section. As far as is practicable, the decision of the Judge shall otherwise be subject to the provisions of § 2700.69.

(2) The parties shall be notified of the Judge's decision by the most expeditious means reasonably available. Service of the decision shall be by certified or registered mail, return receipt requested.

(f) *Review of decision.* Any party may seek review of a Judge's decision by filing with the Commission a petition for discretionary review pursuant to § 2700.70 and § 2700.75. The Commission shall act upon a petition on an expedited basis. If review is granted, the Commission shall issue a briefing order. Except under extraordinary circumstances, the Commission will not grant motions for extension of time for filing briefs.

Dated: July 12, 2006.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. E6–11300 Filed 7–17–06; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0074]

32 CFR Part 54

Allotments for Child Support and Spousal Support

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is administratively amending 32 CFR part 54, ''Allotments for Child Support and Spousal Support'' to identify the location of the policy and procedures for Allotments for Child Support and Spousal Support in the DoD Directives System. All other information remains unchanged.

DATES: This rule is effective July 18, 2006.

FOR FURTHER INFORMATION CONTACT: L. Bynum, 703–696–4970.

SUPPLEMENTARY INFORMATION: DoD Directive 1340.17, which was originally codified in the CFR as 32 CFR part 54, has been removed from the DoD Directives System. The sentence added to inform readers that were previously used to making cross-reference to the Directive will now know where to locate additional information.

List of Subjects in 32 CFR Part 54

Alimony, Child support, Military personnel, Reporting and recordkeeping requirements, Wages.

■ Accordingly, 32 CFR part 54 is amended as follows:

PART 54—ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT

■ 1. The authority citation for 32 CFR part 54 continues to read as follows:

Authority: 15 U.S.C. 1673, 37 U.S.C. 101, 42 U.S.C. 665.

■ 2. Section 54.1 is amended by adding a sentence at the end of the section to read as follows:

§ 54.1 Purpose.

* * * The policy and procedures for this part are also located in the DoD Financial Management Regulation (''DoDFMR''), Volume 7B, Chapter 43, section 4304, ''Allotments for Child Support and Spousal Support'' (DoD 7000.14–R).

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–11323 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0093]

32 CFR Part 78

Voluntary State Tax Withholding From Retired Pay

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is administratively amending 32 CFR Part 78, ''Voluntary State Tax Withholding From Retired Pay'' to identify the location of the policy and procedures for Voluntary State Tax Withholding from Retired Pay in the DoD Directives System. All other information remains unchanged.

DATES: This rule is effective July 18, 2006.

FOR FURTHER INFORMATION CONTACT: L. Bynum, 703–696–4970.

SUPPLEMENTARY INFORMATION: DoD Directive 1332.34, which was originally codified in the CFR as 32 CFR part 78, has been removed from the DoD Directives System. The sentence added to inform readers that were previously used to making cross-reference to the Directive will now know where to locate additional information.

List of Subjects in 32 CFR Part 78

Income taxes, Intergovernmental relations, Military personnel, Pensions.

■ Accordingly, 32 CFR part 78 is amended as follows:

PART 78—VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

■ 1. The authority citation for 32 CFR part 78 continues to read as follows:

Authority: 10 U.S.C. 1045.

■ 2. Section 78.1 is amended by adding a sentence at the end of the section to read as follows:

§ 78.1 Purpose.

* * * The policy and procedures for this part are also located in the DoD Financial Management Regulation (''DoDFMR''), Volume 7B, Chapter 26, ''State and Local Taxes'' (DoD 7000.14–R).

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–11324 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH57

Endangered and Threatened Wildlife and Plants; Reclassification of the Gila Trout (Oncorhynchus gilae) From Endangered to Threatened; Special Rule for Gila Trout in New Mexico and Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the federally endangered Gila trout (*Oncorhynchus gilae*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). We are also finalizing a special rule under section 4(d) of the Act that would apply to Gila trout found in New Mexico and Arizona. This special rule will enable the New Mexico Department of Game and Fish (NMDGF) and the Arizona Game and Fish Department (AGFD) to promulgate special regulations in collaboration with the Service, allowing recreational fishing of Gila trout.

DATES: This final rule is effective on August 17, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

You may obtain copies of this final rule from the New Mexico Ecological Services Field Office at the address provided above, by calling (505) 346–2525, or from our Web site at *http://www.fws.gov/ifw2es/NewMexico/*.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**) (telephone 505/346–2525, facsimile 505/346–2542).

SUPPLEMENTARY INFORMATION:

Background

The purposes of the Act (16 U.S.C. 1531 *et seq.*) are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. A species can be listed as threatened or endangered for any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. When we determine that protection of a species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before eventual delisting; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this final rule. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

Previous Federal Action

The Gila trout was originally recognized as endangered under the Federal Endangered Species Preservation Act of 1966 (March 11, 1967; 32 FR 4001), and Federal designation of the species as endangered continued under the Act (1973). In 1987, the Service proposed to reclassify the Gila trout as threatened (October 6, 1987; 52 FR 37424). However, we withdrew our proposal for reclassification on September 12, 1991 (56 FR 46400) (see ''Recovery Plans and Accomplishments'' section below for further information). On November 11, 1996, Mr. Gerald Burton submitted a petition to us to downlist the species from endangered to threatened. We acknowledged receipt of the petition by letter on January 13, 1997. On May 11, 2005, we published a proposed rule to downlist the species, which constituted our 90-day and 12-month findings on the November 11, 1996, petition (70 FR 24750).

In the May 11, 2005, proposed rule (70 FR 24750), we requested all interested parties to submit comments or information concerning the proposed reclassification of the Gila trout from endangered to threatened. We published notices, announcing the proposal and inviting public comment, in the Albuquerque Journal and the Arizona Republic. In addition, we contacted interested parties (including elected officials, Federal and State agencies, local governments, scientific organizations, and interest groups) through a press release and related fact sheets, faxes, mailed announcements, telephone calls, and e-mails. The public comment period on the proposal closed on July 15, 2005.

Systematics

The Gila trout is a member of the salmon and trout family (*Salmonidae*). Gila trout was not formally described until 1950, using fish collected in Main Diamond Creek in 1939 (Miller 1950). It is most closely related to Apache trout (*Oncorhynchus apache*), which is endemic to the upper Salt and Little Colorado River drainages in east-central Arizona. Gila trout and Apache trout are more closely related to rainbow trout (*O. mykiss*) than to cutthroat trout (*O. clarki*), suggesting that Gila and Apache

trouts were derived from an ancestral form that also gave rise to rainbow trout (Behnke 1992, 2002; Dowling and Childs 1992; Utter and Allendorf 1994; Nielsen *et al.* 1998; Riddle *et al.* 1998).

Biological Information

Biological information (*i.e.*, physical description, distribution and threats, life history, and habitat characteristics) on the Gila trout can be found in our proposal for reclassification of the Gila trout with a special rule, published in the **Federal Register** on May 11, 2005 (70 FR 24750), and in the Gila Trout Recovery Plan (USFWS 2003). That information is incorporated by reference into this final rule.

Recovery Plans and Accomplishments

The original Recovery Plan for Gila trout was completed in 1979. The main objective of this Recovery Plan was ''To improve the status of Gila trout to the point that its survival is secured and viable populations of all morphotypes are maintained in the wild'' (Service 1979). The Gila Trout Recovery Plan was revised in 1984, with the same objective as the original plan. Downlisting criteria in the plan stated that ''The species could be considered for downlisting from its present endangered status to a threatened status when survival of the four original ancestral populations is secured and when all morphotypes are successfully replicated or their status otherwise appreciably improved'' (Service 1984). Replication involves either moving individuals from a successfully reproducing original pure or replicated population or taking hatchery-propagated fish and releasing them into a renovated stream. On October 6, 1987, we proposed that Gila trout be reclassified from endangered to threatened with a special rule to allow sport fishing (52 FR 37424). At that time, Gila trout populations were deemed sufficiently secure to meet criteria for reclassification to threatened as identified in the Recovery Plan (October 6, 1987; 52 FR 37424). However, the proposed rule to downlist Gila trout was withdrawn on September 12, 1991 (56 FR 46400), for the following reasons:

(1) Severe flooding in 1988 reduced the Gila trout populations in McKnight Creek by about 80 percent;

(2) Wild fires in 1989 eliminated Gila trout from Main Diamond Creek and all of the South Diamond drainage except Burnt Canyon, a small headwater stream;

(3) Propagation activities at hatcheries had not proceeded as planned, and fish were not available to replenish wild stocks; and

(4) Brown trout, a predator, was present in Iron Creek, which at the time was thought to harbor one of the original pure populations of Gila trout.

The Gila Trout Recovery Plan was revised in 1993, to incorporate new information about ecology of the species and recovery methods. Criteria for downlisting remained essentially the same as in the 1984 revision but were more specific. The 1993 plan specified that downlisting would be considered ''when all known indigenous lineages are replicated in the wild'' and when Gila trout were ''established in a sufficient number of drainages such that no natural or human-caused event may eliminate a lineage.'' The Act only protects species (*i.e.*, Gila trout is the listed entity). The lineages identified in the Recovery Plan do not have separate listed status under the Act. However, by conserving these lineages and their associated genetic diversity, we provide for the conservation of the listed species, Gila trout.

The Recovery Plan was revised again in 2003 (Service 2003). The criteria for downlisting in the 2003 Recovery Plan include the following: (1) The four known non-hybridized indigenous lineages are protected and replicated in the wild in at least 85 kilometers (km) (53 miles (mi)) of streams; (2) each known non-hybridized lineage is replicated in a stream geographically separate from its remnant population such that no natural or human-caused event may eliminate a lineage; and (3) an Emergency Evacuation Procedures Plan for Gila Trout (Emergency Evacuation Plan) to address wildfire impacts and discovery of nonnative salmonid invasion in Gila trout streams has been developed and implemented.

Today all four original pure populations (Main Diamond, South Diamond, Spruce, and Whiskey Creeks) are replicated at least once. Main Diamond has been replicated four times, South Diamond and Whiskey once, and Spruce Creek three times. The Service believes three of the four replicated populations are secure (Main Diamond, South Diamond, and Spruce Creek), and the viability of the Gila trout is sufficiently protected through these populations. The species is no longer in danger of extinction. Whiskey Creek, the fourth pure population, had not been replicated at the time of the proposed rule. The Service completed the replication of the Whiskey Creek population into Langstroth Canyon on June 21, 2006, and will continue to monitor that population. A broodstock management plan and an Emergency Evacuation Plan have been completed (Kincaid and Reisenbichler 2002; Service 2004). Recovery actions have included chemically treating streams within the historic range of the species to remove nonnative fish species, removing nonnative trout by electrofishing, and constructing physical barriers to prevent movement of nonnatives into renovated reaches (Service 2003).

Surveys of the 12 existing populations (excluding the recent replicate; Langstroth Canyon) indicate that the recovery efforts to remove nonnative fish and prevent their return to the renovated areas have been successful (Service 2003). Replicated populations in New Mexico are successfully reproducing, indicating that suitable spawning and rearing habitats are available. Replicated populations in Arizona exist in Raspberry Creek. Young of the year were planted in Raspberry Creek in Arizona in 2000. In 2004, Gila trout in Raspberry Creek were found in mixed size classes, indicating that the fish spawned and successfully recruited. Although some fish were removed from Raspberry Creek due to the threat of wildfire, some of these fish were restocked in November 2004 into the uppermost portions of Raspberry Creek, which survived the impacts caused by the fire and which still support Gila trout. Spawning was not documented in Raspberry Creek in 2005. Young of the year were planted in Dude Creek in 1999; however, due to a lack of recruitment, Dude Creek is no longer considered a viable population.

Overall, there has been an increase in the total wild population of Gila trout. In 1992, the wild populations of Gila trout were estimated to be less than 10,000 fish greater than age 1. In 2001, the population in New Mexico was estimated to be 37,000 fish (Brown *et. al.* 2001). As noted above, Gila trout were more recently replicated in Arizona; as such, we do not have estimated numbers of fish at this time. The stream renovation and transplantation efforts have been accomplished jointly by the Service, Forest Service, NMDGF, AGFD, and New Mexico State University. Original pure populations and their replicates are summarized in Table 1.

TABLE 1.—SUMMARY AND STATUS OF STREAMS INHABITED BY GILA TROUT AS OF JANUARY 2001

[Original pure population (*i.e.*, relict) lineages in bold]

State	County	Stream name	Drainage	km (mi) of stream inhabited	Origin
NM	Sierra	**Main Diamond Creek**	East Fork Gila River	6.1 (3.8)	**Relict Lineage** Eliminated in 1989, re-established in 1994.
NM	Grant	McKnight Creek	Mimbres River	8.5 (5.3)	Replicate of Main Diamond, est. 1970.
NM	Grant	Black Canyon	East Fork Gila River	18.2 (11.3)	Replicate of Main Diamond, est. 1998.
NM	Catron	Lower Little Creek	West Fork Gila River	6.0 (3.7)	Replicate of Main Diamond, est. 2000.
NM	Catron	Upper White Creek	West Fork Gila River	8.8 (5.5)	Replicate of Main Diamond, est. 2000.
NM	Sierra	**South Diamond Creek** [1]	East Fork Gila River	6.7 (4.2)	**Relict Lineage** Eliminated in 1995, re-established in 1997.
NM	Catron (Grant)	Mogollon Creek [2]	Gila River	28.8 (17.9)	Replicate of South Diamond Creek, est. 1987.
NM	Catron	**Spruce Creek**	San Francisco River	3.7 (2.3)	**Relict Lineage.**
NM	Catron	Big Dry Creek	San Francisco River	1.9 (1.2)	Replicate of Spruce Creek, est. 1985.
AZ	Gila	Dude Creek	Verde River	3.2 (2.0)	Replicate of Spruce Creek, est. 1999.
AZ	Greenlee	Raspberry Creek	Blue River	6.0 (3.7)	Replicate of Spruce Creek, est. 2000.
NM	Catron	**Whiskey Creek**	West Fork Gila River	2.6 (1.6)	**Relict Lineage.**
NM	Catron	Langstroth Canyon	West Fork Gila River	9.0 (5.6)	Replicate of Whiskey Creek est. 2006.

[1] South Diamond Creek includes Burnt Canyon.

[2] Mogollon Creek includes Trail Canyon, Woodrow Canyon, Corral Canyon, and South Fork Mogollon Creek. Portions of the drainage are in Grant County, New Mexico.

The four original pure population lineages are currently protected and replicated in 109 km (67 mi) of stream. Each replicate is geographically separate from its original pure population with one exception. The Spruce Creek replicate in Big Dry Creek is proximal; however, the additional replicate in Raspberry Creek is located more than 75 km (47 mi) to the northwest. An Emergency Evacuation Plan has been developed and it has been successfully implemented twice. The plan addresses emergency-related impacts (including floods) and discovery of nonnative salmonid invasions (Service 2004). In 2002, the Emergency Evacuation Plan (Service 2004) was implemented during the Cub Fire to evacuate fish from Whiskey Creek (Brooks 2002), and in 2003, the plan was implemented during the Dry Lakes Fire to remove fish from Mogollon Creek (J. Brooks, U.S. Fish and Wildlife Service, in litt. 2003b).

Summary of Comments and Responses

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of seven appropriate and independent experts following publication of the proposed rule. We received responses from three of these reviewers. Two of the reviewers were in support of the reclassification with special rule and provided no further comments. One of the reviewers did not support the proposal. His comments are included in the summary below.

(1) *Comment:* Dude and Raspberry Creeks in Arizona do not qualify as successful transplants because there is no Gila trout reproduction in the former and not enough time has passed to determine the establishment of a self-sustaining population in the latter. Thus, the plan criterion of 85 stream km of occupied habitat has not been met.

Our Response: Dude Creek (replicate of Spruce Creek) is no longer considered a viable population due to lack of recruitment. However, there was documentation of reproduction and successful recruitment in Raspberry Creek (also a replicate of Spruce Creek) in 2004. In addition, the Raspberry Creek population survived a fire in 2004, and evacuated fish were returned to the upper portion of the creek later in the year. The four original pure population lineages are currently protected and replicated in 109 km (67 mi) of stream. Thus, we have exceeded the recovery criteria of establishing 85 stream km (53 mi) of occupied habitat. We completed the replication of Whiskey Creek into Langstroth Canyon on June 21, 2006. Subsequent monitoring will be done to ensure the viability of the replicate.

(2) *Comment:* The proposed reclassification and special rule should be rejected on the basis that they do not meet the intent of the Act, and do not promote recovery of Gila trout.

Our Response: We believe that the special rule promotes the conservation and recovery of Gila trout by relieving population pressures as described under the ''Description of Special Rule'' section below. More specifically, we anticipate that implementation of the special rule will benefit the Gila trout by providing a means whereby excess Gila trout from captive rearing may be placed in streams for recreational benefit rather than destroyed. Furthermore, recreational management for Gila trout will be consistent with the goals of the Recovery Plan for the species (Service 2003).

Additionally, the special rule contributes to the conservation of the Gila trout through: (1) Eligibility for

Federal sport fishing funds; (2) increase in the number of wild populations; (3) enhanced ability to monitor populations (e.g., creel censuses) for use in future management strategies; and (4) creation of goodwill and support in the local community. Each of these topics is discussed in detail in the ''Description of Special Rule'' section below.

(3) *Comment:* Replicates of Main Diamond Creek are less than 10 years old and do not have enough generations to determine whether they can support self-sustaining populations of Gila trout. South Diamond Creek and its replicate Mogollon Creek also have a history of less than 10 years.

Our Response: The Main Diamond Creek lineage is the most replicated of all the lineages (see Table 1 above). The Mogollon Creek population was established in 1998, and is well established. Currently it supports more than five different age classes (Jim Brooks, NMFRO, pers. comm. 2006). Self-sustaining populations are a component of the criteria for delisting, not a component of the criteria for downlisting. See our response to Comment 11 below.

(4) *Comment:* McKnight Creek is in the Mimbres River drainage and not within the historical range of the Gila trout, and should not be considered as contributing to recovery.

Our Response: While McKnight Creek is not within the historical range of Gila trout, it has played an important role in the improved status of the species. The McKnight Creek population was established in 1972, when there was no direction for conservation and recovery actions in the native range of species. When a fire burned through Main Diamond Creek in 1989, McKnight Creek maintained the Main Diamond Creek lineage. Currently, due to its large population size, it is used to provide and maintain genetic variability of the captive broodstock at the Mora Fish Hatchery and Technology Center.

(5) *Comment:* Dry Creek is not geographically separate from Spruce Creek and has extremely limited habitat.

Our Response: It is true that Dry Creek is not geographically separate from Spruce Creek. However, Spruce Creek is also replicated by Raspberry Creek, which is geographically separate.

(6) *Comment:* Although Gila trout may be rescued from a stream threatened by wildfire, it takes years to many decades for a stream ravaged by wildfire to recover to a point that it can sustain a trout population.

Our Response: Although it may take decades for a stream to recover from a devastating wildfire, not all wildfires are devastating, and recovery for less intense fires can occur within a few years. The effects to the streams can range anywhere from mild to extreme, and likewise the timeline for returning fish to those streams can be of short or long duration. Emergency evacuated fish are held at the Mora Fish Hatchery until a post-fire evaluation determines that the fish can be returned to the stream. Gila trout evacuated from Raspberry Creek in 2004 were returned within the same season after an evaluation determined the effects of the fire on the upper portions of the stream were minimal. In addition, Gila trout evacuated from Mogollon Creek were used to supplement the captive broodstock for additional recovery efforts.

(7) *Comment:* There is no provision in the Emergency Evacuation Plan to rescue Gila trout populations threatened by flood or drought. The proposed reclassification and Emergency Evacuation Plan address the threat of predation from brown trout but do not address the threat of hybridization with rainbow trout.

Our Response: The Emergency Evacuation Plan specifically addresses the rescue of Gila trout due to wildfire, flooding, drought, and invasion by nonnative salmonids. Both the proposed rule and the Emergency Evacuation Plan refer to nonnative salmonids, which include rainbow trout.

(8) *Comment:* The proposed rule dismisses whirling disease as a potential threat to Gila trout because the species is found only in high elevation streams with low water temperatures. However, Gila trout occur in streams as low as 6,500 feet (ft) and in water temperature between 60 to 70 degrees Fahrenheit (°F). In addition, you do not address the threat of bacterial kidney disease (BKD), which occurs in Gila trout streams.

Our Response: Whirling disease and BKD are minor potential threats to Gila trout. Whirling disease is unlikely to threaten Gila trout because: (1) There has never been a detection of the intermediate host (*Tubifex tubifex*) from the many benthic samples taken; (2) there is no source for infection (rainbow trout have not been stocked in the Gila Basin since the early 1970s, and the NMDGF no longer stocks brown trout); and (3) despite many years of monitoring and sampling of Gila trout populations, the disease has never been detected.

Gila trout from Whiskey Creek tested positive for antigens of BKD, indicating that there was past exposure to BKD, but fish in Whiskey Creek developed an antibody to resist the disease. However, we have no information documenting that BKD is currently present in Whiskey Creek or other streams where Gila trout are extant. We believe that the Whiskey Creek population was exposed to BKD prior to the listing of the Gila trout (Jim Brooks, NMFRO, pers. comm 2006). Please refer to discussion under ''Factor C. Disease and Predation'' below.

(9) *Comment:* Considering recent events (wildfires, drought, floods, and invasion by nonnative trout), most recovery actions have been undertaken to replace or rescue populations that were lost rather than establish new ones. The present proposal assumes that history will not repeat itself.

Our Response: The threats from wildfire, drought, flood, and invasion by nonnative trout exist, but we have successfully used our Emergency Evacuation Plan to minimize those threats. We have a highly successful collaborative recovery program with participation from the Forest Service, Service, NMDGF, and AGFD. Cooperative recovery actions have increased the number of populations from 4 at the time of listing to 13 today. In addition, the West Fork Gila River Restoration Project is ongoing and will add a total of 34 km (21 mi) to occupied range including the Whiskey Creek replication.

(10) *Comment:* The Emergency Evacuation Plan has been invoked three times in three years, indicating that extraordinary efforts must continue to prevent extirpation of the species from a significant portion of its range. Therefore, the reclassification is premature.

Our Response: The Emergency Evacuation Plan has been used several times in the past few years to rescue populations that may otherwise be lost. The plan was developed specifically for the purpose of minimizing threats from natural events. These examples demonstrate the usefulness and success of the emergency response process. Please refer to Comment 6 above.

(11) *Comment:* The benefit to Gila trout from implementation of the special rule is speculative. There is no guarantee that sport fish money will be spent on Gila trout. The number of wild populations of Gila trout will not increase because hatchery fish will be stocked into streams containing nonnative trout, where a few will be removed by anglers or predation and the rest will hybridize with the nonnatives. Creel census will add nothing to information regarding the viability of the populations. Demographic monitoring is already in place and being accomplished.

Our Response: Funds generated by sport fishing activity are already being

spent on Gila trout for conservation. Although there is no guarantee that additional monies will be spent on Gila trout, allowing for angling would contribute to sport fish money. This would create an opportunity for generating revenue from Gila trout angling and then using that revenue to supplement Gila trout conservation activities.

Although increases in the number of wild populations of Gila trout will not be immediate, we believe that over time, stocking of nonnative trout would be discontinued in favor of efforts to restore Gila trout. In addition, we will have the ability to utilize Gila trout derived from the large numbers of fish produced under the genetic broodstock management guidelines and excess to recovery needs. Currently, the hatchery is producing fish beyond what we are using for recovery. These excess fish can be used to support angling programs in non-recovery streams and lakes.

Although the details of the creel survey programs have yet to be worked out by the States, the programs will likely include monitoring of angling impacts on Gila trout by gathering information such as population data (size of fish, number caught, and released), data concerning the survival of released fish, and angler-related data.

Public Comments

In the proposal to reclassify the Gila trout from endangered to threatened with a special rule, we requested that all interested parties submit comments on the proposed reclassification and special 4(d) rule enabling NMDGF and AGFD to promulgate special regulations in collaboration with the Service allowing recreational fishing for Gila trout. In addition, we also requested information concerning angling opportunities that may be affected by this action in New Mexico or Arizona and how the special rule might affect these uses and further the conservation of the Gila trout beyond what we have discussed. We requested this information in order to make a final listing determination based on the best scientific and commercial data currently available. During the public comment period, we received 16 written comments (2 written comments were identical, in the form of automatically generated letters), and 7 speakers gave verbal comments at the public hearings. All substantive information provided during the public comment period, written and verbal, either has been incorporated directly into this final determination or is addressed below. Similar comments are grouped together by issue.

Issue 1: Procedural and Legal Compliance

(12) *Comment:* It is premature to downlist the Gila trout from endangered to threatened at this time. The Service has not yet met its own Emergency Recovery Plan standard of replicating the Gila trout's four original genetic lineages, inclusive of Whiskey Creek. Given the fact that the Gila trout population remains small and fragile, and the long-term recovery strategy for the Gila trout is still problematic due to fire, flood, drought, or other natural disaster dangers, a downlisting could severely endanger or even destroy the species. The Service is setting a precedent by downlisting a species that has not met current recovery criteria and relying on future anticipated progress as a basis for reclassification.

Our Response: We have met every component of the downlisting criteria recommended in the Recovery Plan, with the replication of all of the four known, non-hybridized lineages. The replication of the Whiskey Creek lineage into Langstroth Canyon was completed on June 21, 2006. Additional efforts will be pursued to expand the Whiskey Creek population to its confluence with the upper West Fork Gila River in 2007. The Forest Service has evaluated the effects of this action under the National Environmental Policy Act (42 U.S.C. 4321–4347) and section 7 of the Act. The New Mexico Game Commission approved the use of Antimycin to remove nonnatives in the renovation of Langstroth Canyon. With the completion of the Whiskey Creek replication into Langstroth Canyon, we currently have Gila trout in 109 km (67 mi) of stream. Thus, we have exceeded the recovery criteria of establishing 85 stream km (53 mi) of occupied habitat.

We also have an Emergency Evacuation Plan in place that has proven to be successful to minimize impacts on Gila trout that are threatened by wildfire and other potential threats such as floods and drought. The plan can be implemented through the emergency consultation provisions under section 7 of the Act during emergency events (*e.g.*, flood, fire, drought).

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that over all criteria, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have be recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management and judging the degree of recovery of a species is also an adaptive management process that may, or may not, fully follow the guidance provided in a recovery plan.

Endangered status is no longer appropriate because we have increased the number of Gila trout populations from 4 at the time of listing to 13 today. In addition, abundance has increased significantly over the last 10 years (Brown *et al.* 2001). Major threats to Gila trout have been reduced (*e.g.*, nonnative salmonids are not in the streams that currently support Gila trout), and we have measures in place to minimize remaining threats (see discussion in ''Summary of Factors Affecting the Species'' below). Additionally, reclassifying Gila trout as a threatened species does not diminish any of the protections it currently receives as an endangered species, except that the special rule will allow take in accordance with fishing regulations enacted by New Mexico and Arizona.

(13) *Comment:* Some forms of recreational fishing for Gila trout are not yet appropriate because populations remain fragile. Not all of the genetic strains in Gila trout streams are recovered or are self-sustaining and able to withstand fishing pressure. Despite the fact that there has been no fishing of Gila trout for more than 50 years in New Mexico, the population is still limited. This action could threaten the fish and reverse years of trout preservation.

Our Response: We do not expect a high level of angling pressure on Gila trout streams because: (1) Not every stream occupied by Gila trout will be opened to fishing, *e.g.*, as stated elsewhere in this rule, the four relict populations will not be opened for angling; (2) these streams are high

elevation, remote, and difficult to access; and (3) it is likely that additional ''non-recovery'' or ''enhancement'' streams will be stocked with surplus hatchery-raised fish. We expect that the State agencies, in collaboration with the Service, will determine which streams will be opened to fishing, to what degree, and the types of angling that will be allowed (*e.g.*, catch and release using artificial flies and lures with single barbless hooks). In general, establishment of recreational opportunities can be developed in recovery waters that have stable or increasing numbers of individuals (as measured by population surveys) and where habitat conditions are of sufficient quality to support viable populations of Gila trout (populations having annual recruitment, size structure indicating multiple ages, and individuals attaining sufficient sizes to indicate 3 to 7 years of survival). In addition, recreational opportunities may be developed in non-recovery or enhancement waters. According to NMDGF, the process by which a stream is designated a fishery involves: (1) Carefully evaluating the Gila trout population (*e.g.*, size structure, density, distribution, and recruitment) in each stream; (2) determining whether the stream can sustain angling and how much (this evaluates a suite of different angling pressures); (3) making a recommendation to designate the stream a fishery; and (4) monitoring to insure there are no detrimental effects to the population from angling. If monitoring indicates a negative effect on the conservation of Gila trout, the fishing regulations can be amended, and the stream withdrawn as a fishery. The process by which AGFD designates a fishery is very similar and can be found on the AGFD Web site at *http://www.azgfd.gov/inside_azgfd/rulemaking_process.shtml.*

(14) *Comment:* The Emergency Evacuation Plan should be fully implemented before there is any discussion of removal of the Gila trout from the Endangered Species list. Although there has been an increase in the number of Gila trout populations, those populations are still not capable of fishing pressure since the Gila Trout Emergency Plan has not been complied with by the Service and the Service concedes that ''drought, wildfire, and floods remain as threats'' to stable fish populations.

Our Response: The Emergency Evacuation Plan is in place and has been implemented in 2002, 2003, and 2004, and will continue to be implemented as needed. The Emergency Evacuation Plan was developed to protect against losses of Gila trout populations due to wildfire-related effects (including floods), nonnative salmonid invasion, and drought. In addition, the plan is currently under review to update personnel contact information and, where appropriate, revise and improve evacuation procedures.

(15) *Comment:* Gila trout is a critically imperiled species whose future is not secure and for which the conservation benefits of sport fish designation are unclear. Individual Gila trout of suitable size to interest anglers are a small proportion of existing populations. From a population dynamics perspective, these larger fish are among the most important. Their intentional or inadvertent removal (via angling stress and mortality) would be detrimental, especially where populations are small. This was the case for the roundtail chub (*Gila robusta*) in Arizona that was designated a sport fish in lieu of listing. The roundtail chub's status continued to deteriorate despite the accompanying assurances that sport fish dollars would provide a conservation benefit. In addition, Gila trout fishing regulations have yet to be developed, thus there is no opportunity to assess what protections will actually be provided.

Our Response: Sport fishing for Gila trout will only be allowed through the 4(d) rule and subsequent State regulations promulgated by Arizona and New Mexico in collaboration with the Service. The Gila trout will be considered a threatened species under the Act and continue to receive recovery funding. Therefore it will not rely solely on monies generated through the Federal Aid in Sport Fish Restoration Act (Dingell-Johnson Act) (16 U.S.C 777–777*l* of 1950, as amended) or other sport fish-related revenue. Contributions from the Dingell-Johnson Act have been used in the past and are currently being used to fund conservation actions for this species, and therefore it is anticipated that those monies and any other sport fish-related revenue will continue to be utilized in the future. As noted, individual streams will only be opened to sport fishing after each State conducts a thorough analysis and determines that a fishery is supportable. We anticipate that the State Game Commission's meetings to amend the fishing regulations to allow sportfishing of Gila trout will be open to the public and comments will be solicited. Thus, we expect the public will have ample opportunity to evaluate proposals from the States. It is likely that most of the angling opportunities would be offered in non-recovery streams stocked with surplus hatchery fish.

The roundtail chub is not a federally-listed species and as such cannot be compared to the Gila trout, which still receives the Act's protection and associated funding.

(16) *Comment:* Substantial take is occurring from illegal fishing activities.

Our Response: We did not receive any information during the public comment period that documents illegal fishing as a widespread threat to the species. There is limited evidence that illegal fishing activity has taken place (*e.g.*, fishing tackle has been found on a few occasions). Still, we believe the amount of take is small. Please refer to our discussion below under ''Factor B. Overutilization for commercial, recreational, scientific, or educational purposes.''

(17) *Comment:* The Service issues too many research permits resulting in a negative effect to fish species.

Our Response: We have only issued 13 recovery permits for Gila trout since August 2002. The majority of these permits are issued to the Forest Service, the State Game and Fish Agencies, and the Service for survey and monitoring work. In addition, to minimize potential impacts, the Service insures that permits issued for research purposes do not overlap.

(18) *Comment:* In the current proposal, there are no restrictions on the States to prevent opening of streams that contain relict or replicated populations to angling. A draft of proposed State regulations should be included in the proposal for public analysis.

Our Response: As stated in the ''Description of Special Rule'' section, this final rule will allow recreational fishing of Gila trout only in specified waters. Areas open to fishing would not include the four relict populations identified in Table 1.

The States need the flexibility to adjust how a fishery is regulated on a case-by-case basis. The States can amend their fishing regulations in a manner of months, whereas the Federal rulemaking process typically takes much longer. The general process to amend fishing regulations includes a State Game and Fish Agency (NMDGF or AGFD) making a recommendation to their State Game Commission. The State Game Commission considers the recommendations and can either finalize the proposed regulations or postpone a final action until a future date. We anticipate that the State Game Commission's meetings to amend the fishing regulations to allow sportfishing of Gila trout will be open to the public and comments will be solicited. Thus, we expect the public will have ample opportunity to evaluate proposals from

the States. For these reasons, we believe it is prudent to allow the States to develop Gila trout regulations apart from the Federal rulemaking process.

(19) *Comment:* Critical habitat for Gila trout should be designated for at least those streams containing relict populations and, ideally, all those streams that contribute to recovery of the species.

Our Response: The Gila trout was originally recognized as endangered under the Federal Endangered Species Preservation Act of 1966 (March 11, 1967; 32 FR 4001), prior to critical habitat being formalized in the 1978 and 1982 amendments to the Act. One of the applicability provisions in the 1982 amendments to the Act indicates that the provision for designating critical habitat, section 4(a)(3)(A) of the Act, shall not apply with respect to any species which was listed as an endangered species or a threatened species before November 10, 1978 (section 4(b)(6)(A)(i)(II) of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1533(b)(6)(A)(i)(II)), Pub. L. 95–632, at 2(2), 92 Stat. 3751 (November 10, 1978), and Pub. L. 97–304, at 2(b)(2), 2(b)(4), 96 Stat. 1411, 1416 (October 13, 1982). Therefore, we are not required to designate critical habitat for the Gila trout.

Furthermore, we do not believe it is necessary to designate critical habitat for the Gila trout due to existing protections and the progress being made towards species recovery (as discussed throughout this rule). For example, 10 of 11 populations in New Mexico exist in the Aldo Leopold Wilderness or Gila Wilderness, and the population in Raspberry Creek in Arizona occurs in the Blue Range Primitive Area. Thus, a majority of the extant populations are protected by these special designations on Forest Service lands. We provide a further discussion of the existing regulatory protections for the Gila trout in ''Factor D: The inadequacy of existing regulatory mechanisms'' below.

(20) *Comment:* Because the Recovery Plan criteria have not been met, the size and diversity of Gila trout populations remain inadequate, and significant risks to the species are still present. Seven populations have been lost to fire since 1989. The Iron and McKenna Creek populations are hybridized with rainbow trout, indicating they cannot be used for recovery. The abundance of Gila trout numbers in the Spruce Creek population remains low.

Our Response: We agree that fire is still one of the most significant threats to Gila trout. The Emergency Evacuation Plan was developed to allow for the emergency removal of Gila trout from a stream that is immediately threatened and for the transport of removed Gila trout to a facility where they will be held until conditions allow the fish to be successfully placed back into the original stream. We have utilized the plan in the last several years and it has been successful. (Please refer to ''Recovery Plans and Accomplishments'' section above.)

In 1998, it was determined that the McKenna and Iron Creek populations had hybridized with rainbow trout and, therefore, did not contribute to the recovery of the species because they are not pure (Leary and Allendorf 1998; Service 2003). In 2002, three age classes (age 0 to age 3) of Gila trout were abundant in Spruce Creek (USFWS 2003).

(21) *Comment:* How will the 4(d) rule be implemented? What will be the role of the States in conserving Gila Trout?

Our Response: As noted in response to Comment 13 above, the States, in collaboration with the Service, will determine whether a Gila trout stream will be designated as a fishery. See also our response to Comment 19 above for further information.

(22) *Comment:* Only when the Gila trout population is self-sustaining in the wild should the Service consider reclassification.

Our Response: We have evaluated the threats to the Gila trout (see ''Summary of Factors Affecting the Species'' section), and are reclassifying this animal as threatened (*i.e.*, one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). Based on the information available, we believe the Gila trout is no longer in danger of extinction throughout all or a significant portion of its range (*i.e.*, it does not meet the definition of an endangered species). The criteria for downlisting the Gila trout to a threatened species, outlined above in the ''Recovery Plans and Accomplishments'' section, refers, in part, to replicating the indigenous lineages in 85 km (53 mi) of stream. The reference to establishment of self-sustaining populations is only discussed in the Recovery Plan criteria for delisting (*i.e.*, fully recovered and removed from the list of endangered species). Thus, since we are not proposing to ''delist'' the Gila trout at this time, the reference to self-sustaining populations is not pertinent to our current action.

(23) *Comment:* If fishing for Gila trout is allowed, it will be abused, and there will be no chance for the population to recover.

Our Response: Both States have a long and successful history in the management of recreational fisheries. Regulations implemented for Gila trout along with increased law enforcement attention will insure that protections are adequate for the conservation of the species. In addition, as stated previously, the populations will be monitored to ensure that they can withstand fishing pressure while contributing to the conservation of the species. If monitoring indicates that a Gila trout population is being adversely affected, the fishery may be closed. See also our responses to Comments 12 and 15 above.

Issue 2: Biological Concerns

(24) *Comment:* Factors that threaten the security of Gila trout have not been removed and remain so severe that the species could be eliminated from a significant portion of the remnant habitat it now occupies within its historic range. These factors include, but are not limited to, hybridization with other fish species, stream flooding or desiccation, direct or indirect effects of fire, disease, parasites, and predation. Many of these threats cannot be eliminated but their impacts can be mitigated by ensuring that viable Gila trout populations occupy a suite of suitable streams across a broad regional landscape, which currently is not the case. For example, recent fires that have resulted in emergency evacuations or eliminated Gila trout from several streams demonstrate that the species is in a precarious state and deserves the continued protection afforded by endangered status.

Our Response: As discussed in the ''Summary of Factors Affecting the Species'' section below, we recognize that some threats to Gila trout still exist. However, based upon our analysis, threatened status is the appropriate classification for the Gila trout. For this reason, we are reclassifying the species from endangered to threatened. Refer to the ''Available Conservation Measures'' section below for a discussion of the protections afforded the Gila trout as a threatened species. In addition we have an Emergency Evacuation Plan in place to minimize effects from fire, drought, floods, and nonnative salmonid invasion.

(25) *Comment:* Given the current ban on piscicide use by the New Mexico Game Commission, it is unlikely that the Whiskey Creek Gila trout population can be securely replicated.

Our Response: The replication of Whiskey Creek was completed on June 21, 2006. The New Mexico Game Commission recently gave their

approval to use Antimycin on the West Fork Gila River once they concluded that the use of Antimycin would aid in the downlisting of Gila trout (New Mexico Game Commission 2005).

(26) *Comment:* Federal agencies routinely use pesticides, herbicides, and other chemicals that are lethal to macroinvertebrates, thereby depleting the food supply for Gila trout. Grazing is detrimental to Gila trout. Moreover, prescribed burning is a threat to Gila trout because the fine particulate matter from prescribed burning suffocates fish.

Our Response: We acknowledge that these are all potential threats to the Gila trout. However, Federal agencies considering an action that may affect a threatened or endangered species are subject to section 7 of the Act. Under section 7, Federal agencies must consult with the Service to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or adversely modify its habitat. Please see Comment 27 below for discussion of piscicides and macroinvertebrates. As discussed in the ''Factor A. The present or threatened destruction, modification, or curtailment of its habitat or range'' section below, livestock grazing is carefully managed now, and on creeks occupied by Gila trout, grazing has either been suspended or cattle are excluded.

Also described under ''Factor A'' below, prescribed fire is closely managed and analyzed under section 7 of the Act to minimize adverse effects to the Gila trout and its habitat. Threats of wide-scale habitat loss due to wildfire are real and immediate on many public lands. Reducing fuels in these areas may help to protect habitat for threatened and endangered species. Forest thinning, often in conjunction with prescribed fires, is extremely important as a management tool needed to enhance, and often to restore, many of the ecosystem functions and processes. These types of projects may result in long-term benefits to listed species, including the Gila trout, but may also contribute, in the short term, to certain adverse effects to the species. Nevertheless, we believe it is important to address adverse impacts by minimizing, to the greatest extent practical, those short-term adverse effects and move forward with proactive land management to restore ecosystem functions and community dynamics.

(27) *Comment:* Using piscicides to remove nonnative fish ultimately hurts all fish species and ruins water quality.

Our Response: At the levels used to kill trout, Antimycin has been demonstrated to have no effect on amphibians, mammals, and birds, and only minimal effects on some insects (Finlayson *et al.* 2002). In addition, Antimycin alone appears to have little short-term effect on invertebrates in high elevation streams (Cerreto *et al.* 2003). Antimycin breaks down rapidly, and can be contained easily because it naturally detoxifies quickly. Numerous researchers have found that organic substances in a streambed act as a filter to naturally detoxify Antimycin-treated water. Additionally, it can be neutralized by 20 minutes of contact with potassium permanganate (Q&A Fact Sheet, Westslope Cutthroat Trout Conservation Program).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations issued to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threaten the continued existence of the species. A species may be reclassified, according to 50 CFR 424.11(c), if the best scientific and commercial data available provide a basis for determining that the species' current status is no longer correct. This analysis must be based upon the five categories of threats specified in section 4(a)(1).

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting, and the associated removal or reduction of the Act's protections. Our evaluation of the future threats to the Gila trout that would occur after reclassification to threatened status is partially based on the protection provided by the Gila and Aldo Leopold Wilderness areas, the Emergency Evacuation Plan, and the broodstock management plan, and on limitations on take that would be determined by the States in collaboration with us.

Discussion of the five listing factors and their application to reclassification of the Gila trout are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In the past, Gila trout populations were threatened by habitat degradation and watershed disturbances (52 FR 37424). These factors compounded the threats posed by nonnative salmonids (see Factors C and E below for discussions of nonnative salmonids). We discuss habitat degradation from livestock grazing, timber harvest, and wildfires below.

Livestock Grazing

Intensive livestock grazing has been shown to increase soil compaction, decrease infiltration rates, increase runoff, change vegetative species composition, decrease riparian vegetation, increase stream sedimentation, increase stream water temperature, decrease fish populations, and change channel form (Meehan and Platts 1978; Kaufman and Kruger 1984; Schulz and Leininger 1990; Platts 1991; Fleischner 1994; Ohmart 1996). Although direct impacts to the riparian zone and stream can be the most obvious sign of intensive livestock grazing, upland watershed condition is also important because changes in soil compaction, percent cover, and vegetative type influence the timing and amount of water delivered to stream channels (Platts 1991). Increased soil compaction, decreased vegetative cover, and a decrease in grasslands lead to faster delivery of water to stream channels, increased peak flows, and lower summer base flow (Platts 1991; Ohmart 1996; Belsky and Blumenthal 1997). As a consequence, streams are more likely to experience flood events during monsoons (water runs off quickly instead of soaking into the ground) that negatively affect the riparian and aquatic habitats and are more likely to become intermittent or dry in September and October (groundwater recharge is less when water runs off quickly) (Platts 1991; Ohmart 1996).

Livestock grazing practices that degrade riparian and aquatic habitats generally cause decreased production of trout (Platts 1991). Livestock affect riparian vegetation directly by eating grasses, shrubs, and trees; by trampling the vegetation; and by compacting the soil. Riparian vegetation benefits streams and trout by providing insulation (cooler summer water temperatures, warmer winter water temperatures), by filtering sediments so that they do not enter the stream (sediment clogs spawning gravel and reduces the survival of salmonid eggs), by providing a source of nutrients to the stream from leaf litter (increases stream productivity), and by providing root wads, large woody debris, and small woody debris to the stream (provides cover for the fish) (Kauffman and Krueger 1984; Platts 1991; Ohmart 1996). Poor livestock grazing practices can increase sedimentation through

trampling of the stream banks (loss of vegetative cover), by removal of riparian vegetation (filters sediment), and through soil compaction (decreases infiltration rates, increases runoff, causes increased erosion). Sediment is detrimental to trout because it decreases the survival of their eggs (Bjornn and Reiser 1991), and because of its negative impact on aquatic invertebrates, a food source for trout (Wiederholm 1984).

In the late 1800s and early 1900s, livestock grazing was uncontrolled and unmanaged over many of the watersheds that contain Gila trout, and much of the landscape was denuded of vegetation (Rixon 1905; Duce 1918; Leopold 1921; Leopold 1924; Ohmart 1996). Livestock grazing is more carefully managed now, which has resulted in less impact to streams occupied by Gila trout. Improved grazing management practices (e.g., fencing) have reduced livestock access to streams. Six of the 12 streams currently occupied by Gila trout are within Forest Service grazing allotments. However, as described below, on the six creeks occupied by Gila trout within Forest Service lands, grazing has either been suspended or cattle are typically excluded.

Mogollon Creek is within the Rain Creek/74 Mountain Allotment. This allotment receives only winter use, and much of the riparian habitat is inaccessible to livestock. Riparian vegetation along Mogollon Creek is in good condition (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Main Diamond Creek and the adjacent riparian zone, located in the South Fork Allotment, are excluded from grazing. The Forest Service is implementing a fencing project along Turkey Run Creek to prevent livestock trespass into Main Diamond Creek (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

Spruce Creek and Big Dry Creek are within the northern portion of the Dry Creek Allotment within the Gila Wilderness and have not been grazed in several years. Although the allotment is not closed to grazing, topography essentially excludes livestock from grazing in the Spruce Creek Drainage and within the occupied reach of Big Dry Creek (J. Monzingo, U.S. Forest Service, Gila National Forest, pers. comm 2006). McKnight Creek is within the Powder Horn Allotment managed by the Headwaters Ranch. The Headwaters Ranch is a partnership that includes The Nature Conservancy and other partners. Grazing has been excluded upstream of occupied habitat as well as from the entire occupied reach of McKnight Creek (J. Monzingo, U.S. Forest Service, Gila National Forest, pers. comm 2006).

South Diamond Creek and Black Canyon are within the Diamond Bar Allotment, where grazing was suspended in 1996. This has resulted in marked improvements in the condition of riparian and aquatic habitat in these areas (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

Lower Little Creek, Upper White Creek, and Whiskey Creek do not occur within grazing allotments. The area of the Gila Wilderness where these streams are located was closed to grazing in the 1950s when the NMDGF acquired the private property associated with the Glenn Allotment, which included these streams (J. Monzingo, U.S. Forest Service, Gila National Forest, pers. comm 2006). The NMDGF and FS have since signed an agreement excluding livestock from the area and allowing the State to utilize the area for elk introduction (J. Monzingo, U.S. Forest Service, Gila National Forest, pers. comm 2006).

In Arizona on the Apache-Sitgreaves National Forest, Raspberry Creek, which is located in the Blue Range Primitive Area, includes two grazing allotments, Strayhorse and Raspberry. The Strayhorse Allotment includes about 75 percent of the watershed above the fish barrier. The allotment was evaluated in July 1998, and determined to be in ''Proper Functioning Condition'' (D. Bills, U.S. Fish and Wildlife Service, in litt. 2003d). It has a well-developed riparian plant community and no adverse impacts from ongoing livestock grazing (Service 2000). Evaluation of the Raspberry Allotment occurred twice in 1998, and concluded that the allotment was ''Functional—At Risk'' and in a ''Downward'' trend (Service 2000). The report noted an incised channel (eroded downward), and concluded that upland watershed conditions were contributing to the riparian degradation. Significant changes were made to the Raspberry Allotment in 2000 (Service 2000). Specifically, the Forest Service required a reduction in livestock numbers to 46 cattle from November 1 to June 14 (or removal of cattle prior to June 14 if utilization standards are reached). Prior to this, 225 cattle were permitted on the Allotment yearlong, and 160 cattle were permitted from January 1 to May 15.

Dude Creek, on the Tonto National Forest, is within the East Verde Pasture of the Cross V Allotment. Current management techniques are designed to protect the stream banks and riparian vegetation, thereby reducing sedimentation and increasing river insulation (and thereby maintaining cooler summer and warmer winter water temperatures). Riparian conditions on Dude Creek continue to improve; however, the Gila trout population has not done well. This is most likely to due to other stressors such as drought.

Timber Harvest

Logging activities in the early to mid 1900s likely caused major changes in watershed characteristics and stream morphology (Chamberlin et al. 1991). Rixon (1905) reported the occurrence of small timber mills in numerous canyons of the upper Gila River drainage. Early logging efforts were concentrated along canyon bottoms, often those with perennial streams. Tree removal along perennial streams within the historical range of Gila trout likely altered water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin et al. 1991). Nine of 10 populations in New Mexico exist in the Aldo Leopold Wilderness or Gila Wilderness. Of the two populations in Arizona, Raspberry Creek occurs in the Blue Range Primitive Area. Timber harvest is not allowed in wilderness or primitive areas. There are no plans for timber harvest near the other streams that have Gila trout (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). If timber harvest were to be proposed in the future in the two areas located outside of a wilderness or primitive area, the Forest Service would need to consider the effects of the proposed action under section 7 of the Act.

Fire

High-severity wildfires, and subsequent floods and ash flows, have caused the extirpation of three populations of Gila trout since 1989: Main Diamond (1989), South Diamond including Burnt Canyon (1995), and Upper Little Creek (2003). In addition, Trail Canyon and Woodrow Canyon (both subpopulations of the Mogollon Creek population) were lost in 1996. In addition, Sacaton Creek was lost in 1996. However, Sacaton Creek was a replicate of Iron Creek, which was determined to be a hybridized population and is no longer considered a legitimate replicate (Propst *et al.* 1992; Brown *et al.* 2001; J. Brooks, Service, pers. comm. 2003). Lesser impacts were experienced in 2002, when ash flows following the Cub Fire affected the lower reach of Whiskey Creek. However, lower Whiskey Creek is frequently intermittent and typically contains few fish (Brooks 2002). Upper Whiskey Creek, where the majority of the fish occur, was not affected by the Cub Fire. The Cub Fire also impacted the upper

West Fork Gila and may have eliminated nonnative trout from the watershed upstream of Turkey Feather Creek (Brooks 2002). In 2003, fire retardant was dropped on Black Canyon, affecting approximately 200 meters (m) (218 yards) of stream (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e). Although some Gila trout were killed, the number of mortalities is unknown (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e) because dead fish were carried by the current out of the area by the time fire crews arrived. However, a week after the retardant drop, live Gila trout were observed about 400 m (438 yards) below the drop site (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e).

Severe wildfires capable of extirpating or decimating fish populations are a relatively recent phenomenon. They result from the cumulative effects of historical or overly intensive grazing (can result in the removal of fine fuels needed to carry fire) and fire suppression (Madany and West 1983; Savage and Swetnam 1990; Swetnam 1990; Touchan *et al.* 1995; Swetnam and Baisan 1996; Belsky and Blumenthal 1997; Gresswell 1999), as well as the failure to use good forestry management practices to reduce fuel loads. Historic wildfires were primarily cool-burning understory fires with return intervals of 3 to 7 years in ponderosa pine and 5 to 20 years in mixed conifer (Swetnam and Dieterich 1985). Cooper (1960) concluded that prior to the 1950s, crown fires were extremely rare or nonexistent in the region. In 2003, over 200,000 acres burned in the Gila National Forest (S. Gonzales, U.S. Fish and Wildlife Service, in litt. 2004). The watersheds of Little Creek, Black Canyon, White Creek, and Mogollon Creek were affected. Because Gila trout are found primarily in isolated, small streams, avoidance of ash flows is impossible, and opportunities for natural recolonization usually do not exist (Brown *et al.* 2001). Persistence of Gila trout in streams affected by fire and subsequent ash flows is problematic. In some instances, evacuation of Gila trout from streams in watersheds that have burned is necessary (Service 2004).

Effects of fire may be direct and immediate or indirect and sustained over time (Gresswell 1999). The cause of direct fire-related fish mortalities has not been clearly established (Gresswell 1999). Fatalities are most likely during intense fires in small, headwater streams with low flows (less insulation and less water for dilution). In these situations, water temperatures can become elevated or changes in pH may cause immediate death (Cushing and Olson 1963). Spencer and Hauer (1991) documented 40-fold increases in ammonium concentrations during an intense fire in Montana. Ammonia is very toxic to fish (Wetzel 1975). The inadvertent dropping of fire retardant in streams is another source of direct mortality during fires (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e).

Indirect effects of fire include ash and debris flows, increases in water temperature, increased nutrient inputs, and sedimentation (Swanston 1991; Bozek and Young 1994; Gresswell 1999). Ash and debris flows can cause mortality months after fires occur when barren soils are eroded during monsoonal rain storms (Bozek and Young 1994; Brown *et al.* 2001). Fish suffocate when their gills are coated with fine particulate matter, they can be physically injured by rocks and debris, or they can be displaced downstream below impassable barriers into habitat occupied by nonnative trout. Ash and debris flows or severe flash flooding can also decimate aquatic invertebrate populations that the fish depend on for food (Molles 1985; Rinne 1996; Lytle 2000). In larger streams, refugia are typically available where fish can withstand the short-term adverse conditions; small headwater streams are usually more confined, concentrating the force of water and debris (Pearsons *et al.* 1992; Brown *et al.* 2001).

Increases in water temperature occur when the riparian canopy is eliminated by fire and the stream is directly exposed to sunlight. After fires in Yellowstone National Park, Minshall *et al.* (1997) reported that maximum water temperatures were significantly higher in headwater streams affected by fire than temperatures in reference (unburned) streams; these maximum temperatures often exceeded tolerance levels of salmonids. Warm water is stressful for salmonids and can lead to increases in disease and lowered reproductive potential (Bjornn and Reiser 1991). Salmonids need clean, loose gravel for spawning sites (Bjornn and Reiser 1991). Ash and fine particulate matter created by fire can fill the interstitial spaces between gravel particles and eliminate spawning habitat or, depending on the timing, suffocate eggs that are in the gravel. Increases in water temperature and sedimentation can also impact aquatic invertebrates, changing species composition and reducing population numbers (Minshall 1984; Wiederholm 1984; Roy *et al.* 2003), consequently affecting the food supply of trout.

As discussed above, in the ''Timber harvest'' and ''Livestock grazing'' sections, we have determined that the threats to Gila trout habitat from livestock grazing and timber harvest have been greatly reduced over time. It is expected that the livestock management practices (*e.g.*, exclusion from riparian zones, reduction in numbers, suspension of grazing in some allotments) that have been implemented will remain in place (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Additionally, the Forest Service will continue to consider the effects of grazing on Gila trout under section 7 of the Act. Presently, 9 of the 10 streams that contain Gila trout occur in the Aldo Leopold Wilderness Area or the Gila Wilderness within the Gila National Forest, New Mexico. Timber harvest, roads, and mechanized vehicles are not allowed in wilderness areas, providing further protection to the habitat of Gila trout. Dispersed recreation does occur in wilderness areas but because of the inaccessibility of most of the streams (not near roads, hiking or backpacking is required), dispersed recreation has very little impact on the habitat. By practice, the NMDGF and AGFD do not stock nonnative trout within wilderness areas or above any barrier that protects a population of Gila trout. The NMDGF has not stocked nonnative fish in wilderness areas for more than 20 years (Mike Sloan, NMDGF, pers. comm. 2004). AGFD seasonally stock the East Verde River, within 3 miles of Dude Creek, with rainbow trout. Dude Creek has one manmade and at least one natural barrier separating it from the East Verde River (K. Young, AGFD, pers. comm. 2006). Downlisting of the Gila trout with the special 4(d) rule will allow AGFD to stock Gila trout into the East Verde River instead of rainbow trout (K. Young, AGFD, pers. comm. 2006). Rainbow trout have not been stocked into the Blue River (Raspberry is a tributary) since 1990 (K. Young, AGFD, pers. comm. 2006).

High-severity forest fires remain a threat to isolated populations because natural repopulation is not possible. However, populations have been reestablished after forest fires (Main Diamond and South Diamond creeks), there is an Emergency Evacuation Plan (Service 2004) that outlines procedures to be taken in case of a high-severity forest fire, and most populations are sufficiently disjunct (*e.g.,* separated by mountain ridges), thereby ensuring that one fire would not affect all populations simultaneously. Additionally, as discussed in this rule, fires have

occurred in recent times in many areas occupied by Gila trout. Thus, the risk of fire in these areas, especially one that would affect all populations, is reduced due to an overall reduction in fuel loads. Populations may still be extirpated because of forest fires, but through management activities (rescue of fish, reestablishment of populations, hatchery management) populations can be, and have been, reestablished successfully once the habitat recovers.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

All stream reaches that contain Gila trout have been closed to sport fishing since the fish was listed in 1967. Main Diamond Creek was closed to angling in the 1930s for the protection of an undescribed fish species, later identified as Gila trout (Dave Propst, NMDGF, pers. comm. 2006). While some illegal fishing may take place, we believe that the amount of take is small. These are remote high-elevation streams located away from roads and difficult to access. NMDGF usually visits the recovery streams annually and has found limited evidence of illegal fishing activity (*e.g.*, fishing tackle has been found on a few occasions). Also, because NMDGF makes periodic visits to these streams, we believe their possible presence at unpredictable times serves as a deterrent to illegal angling activities.

The special rule (see ''Description of Special Rule'' section below) being finalized with this reclassification will enable NMDGF and the AGFD to promulgate special regulations allowing recreational fishing of Gila trout in specified waters, not including the four relict populations identified in Table 1 above. Any changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout, with angling allowed only in selected waters. Recreational management for Gila trout will be consistent with the goals of the Recovery Plan for the species (Service 2003). It is anticipated that implementation of the special rule will benefit the Gila trout by providing a means whereby Gila trout excess to recovery needs may be placed in non-recovery streams, thereby avoiding a choice between potential overcrowding in the designated recovery streams or euthanizing of excess fish. Additionally, the special rule contributes to the conservation of the Gila trout through: (1) Eligibility for Federal sport fishing funds; (2) increase in the number of wild populations; (3) enhanced ability to monitor populations (*e.g.*, creel surveys) for use in future management strategies; and (4) creation of goodwill and support in the local community. Each of these topics is discussed in detail in the ''Description of Special Rule'' section below.

A few Gila trout are removed from the wild for propagation, and some are taken for scientific or educational purposes, but the take is small and controlled through Federal and State permitting. Federal and State permitting will continue. Because of the remoteness of current and proposed recovery streams, the special regulations that will be imposed on angling, and the small amount of Gila trout collected for scientific and educational purposes, we determine that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to Gila trout.

C. Disease or Predation

The carrier of bacterial kidney disease (BKD) is known to occur in trout in the upper West Fork drainage. The carrier, a bacterium (*Renibacterium salmoninarum*), occurs in very low amounts in brown trout populations in the upper West Fork Gila River drainage and in the Whiskey Creek population of Gila trout. The bacterium was also detected in rainbow × Gila trout hybrid populations in Iron, McKenna, and White creeks. Although the carrier bacterium is present, there were no signs of BKD in any Gila trout populations (Service 2003). Trout populations in the Mogollon Creek drainage, McKnight Creek, and Spruce Creek tested negative for BKD.

Whirling disease (WD) was first detected in Pennsylvania in 1956, and was transmitted here from fish brought from Europe (Thompson *et al.* 1995). *Myxobolus cerebralis* is a parasite that penetrates through the skin or digestive tract of young fish and migrates to the spinal cartilage, where it multiplies very rapidly, putting pressure on the organ of equilibrium. This causes the fish to swim erratically (whirl) and have difficulty feeding and avoiding predators. In severe infections, the disease can cause high rates of mortality in young-of-the-year fish. Water temperature, fish species and age, and dose of exposure are critical factors influencing whether infection will occur and its severity (Hedrick *et al.* 1999). Fish that survive until the cartilage hardens to bone can live a normal life span, but have skeletal deformities. Once a fish reaches 3 to 4 inches in length, cartilage forms into bone, and the fish is no longer susceptible to effects from whirling disease. Fish can reproduce without passing the parasite to their offspring; however, when an infected fish dies, many thousands to millions of the parasite spores are released into the water. The spores can withstand freezing, desiccation, and passage through the gut of mallard ducks, and they can survive in a stream for many years (El-Matbouli and Hoffmann 1991). Eventually, the spore is ingested by its alternate host, the common aquatic worm, *Tubifex tubifex.* After about 3.5 months in the gut of the worms, the spores transform into a Triactinomyon (TAM). The TAMs leave the worm and attach to the fish, or they are ingested when the fish eats the worm. The spores are easily transported by animals, birds, and humans.

Salmonids native to the United States did not evolve with WD. Consequently, most native species have little or no natural resistance. Colorado River cutthroat trout and rainbow trout are very susceptible to the disease, with 85 percent mortality within 4 months of exposure to ambient levels of infectivity in the Colorado River (Thompson *et al.* 1999). Brown trout, native to Europe, evolved with *M. cerebralis,* and they become infected but rarely suffer clinical disease. At the study site on the Colorado River, brown trout thrive, but there has been little survival beyond 1 year of age of rainbow trout since 1992 (Thompson *et al.* 1999). Gila trout are also vulnerable to WD (D. Shroufe, Arizona Game and Fish Department, in litt. 2003a)

There have been no documented cases of WD in the Gila River drainage in New Mexico or Arizona. Wild and hatchery populations of Gila trout tested have been negative for WD (Service 2003). Although WD is a potential threat to Gila trout, high infection rates would probably only occur where water temperatures are relatively warm and where *T. tubifex* is abundant. *T. tubifex* is the secondary host for the parasite; when *T. tubifex* numbers are low, the number of TAMs produced will be low, and consequently, the infection rate of Gila trout will be low. *T. tubifiex* is a ubiquitous aquatic oligochaete (worm); however, it is most abundant in degraded aquatic habitats, particularly in areas with high sedimentation, warm water temperatures, and low dissolved oxygen. In clear coldwater streams (typical Gila trout habitat), it is present but seldom abundant. Infection rate is low at temperatures less than 10 °C (50 °F) (Thompson *et al.* 1999).

We determine that BKD is not a likely threat to the 4 original pure populations nor to the 11 replicated populations because of its limited distribution, low occurrence within trout populations,

and lack of any clinical evidence of the disease in Gila trout. Likewise, we determine that WD is not a likely threat to Gila trout because most Gila trout are located in high-elevation headwater streams that typically have cold water and low levels of sedimentation, which limit *T. tubifex* populations and infection rates from TAMs. *T. tubifex* has never been detected in benthic samples collected. Although Gila trout may be susceptible to infection, there has not been a documented occurrence of WD in a wild Gila trout population. Mora National Fish Hatchery and Technology Center, where Gila trout have been held, has tested negative for WD. In addition, NMDGF and AGFD are educating the public about how to prevent the spread of WD (*e.g.*, through educational brochures and information provided with fishing regulations). In summary, no hatchery that stocks Gila trout has a history of whirling disease. In such hatcheries, we control the stocking, source fish, and fish health testing. Further, there will be no stocking of trout in private waters in proximity to Gila trout. Therefore, it is unlikely that Gila trout populations would be exposed to whirling disease.

Predation of Gila trout by brown trout has been a serious problem, and continues to be a problem for fish below stream barriers. Brown trout, a nonnative salmonid, prey on Gila trout and are able to severely depress Gila trout populations. Predation threats have been addressed by chemically removing all nonnative fish and reintroducing only native species. The specific locations and timing of the potential use of chemicals in any future stream restoration projects would be made by the States, in coordination with the Gila Trout Recovery Team, and with the approval of their State Game Commissions. Additionally, the Gila Trout Recovery Plan provides a list of potential stream reaches that may be used for recovery purposes. Physical stream barriers, either natural waterfalls or constructed waterfalls (*e.g.*, either composite concrete/rock or basket-type gabion) built by cooperating agencies, prevent brown trout from moving upstream and preying on Gila trout. Barrier failure is generally not considered a threat to existing Gila trout populations in New Mexico because most existing barriers are natural waterfalls. However, human-made barriers exist on lower Little Creek, McKnight Creek, and Black Canyon. Failure of human-made barriers would most likely result from catastrophic flooding and include scouring around barriers, undercutting, or complete removal. Brown trout and other nonnative species downstream from these barriers remain a threat.

The threat of predation by brown trout has been reduced by eliminating brown trout from streams with Gila trout populations, and by creating barriers that prevent the upstream dispersal of brown trout into areas occupied by Gila trout. Field monitoring by the Service, Forest Service, AGFD, and the NMDGF of Gila trout provides a means to detect the introduction of brown trout into a Gila trout population, and, once detected, the nonnatives are removed (Service 2004). Each population is monitored at least once every 3 years. Monitoring may occur more often depending upon the situation, including additional surveys due to the occurrence of wildfire. Annual monitoring using electrofishing is not undertaken due to potential sampling impacts from electrofishing. The Emergency Evacuation Plan provides further information on the procedures for detecting and addressing the threat of nonnatives (Service 2004).

D. The Inadequacy of Existing Regulatory Mechanisms

Before the Gila trout was federally listed as endangered (1967), the species was protected by New Mexico. NMDGF had closed angling to all streams known to contain pure populations of Gila trout. Upon being listed under the Act, the Gila trout immediately benefited from a Federal regulatory framework that provided protection and enhancement of the populations in three ways. First, take was prohibited. Take is defined under the Act to include killing, harassing, harming, pursuing, hunting, shooting, wounding, trapping, capturing, or collecting individuals, or attempting to do any of these things. Habitat destruction or degradation is also prohibited if such activities harm individuals of the species. Second, section 7 of the Act requires that Federal agencies consult with the Service to ensure that actions they carry out, fund, or authorize will not likely jeopardize the continued existence of the species or adversely modify its habitat. Third, once a species is listed, the Service is required to complete a recovery plan and make timely revisions, if needed. Thus, listing the species provided recognition, protection, and prohibitions against certain practices (such as take), facilitated habitat protection, and stimulated recovery actions.

Subsequent to the Federal listing action, the States of New Mexico and Arizona officially recognized the declining status of the species. In 1988, Arizona designated the Gila trout as an endangered species, which includes species that are known or suspected to have been extirpated from Arizona but that still exist elsewhere. New Mexico designated the Gila trout as an endangered species (Group 1) on January 24, 1975 (NM State Game Commission Regulation No. 663) under authority of the Wildlife Conservation Act. Group 1 species are those whose prospects of survival or recruitment in New Mexico are in jeopardy. The designation provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–18, NMSA 1978) and prohibits taking of such species except under a scientific collecting permit. In 1989, New Mexico downlisted Gila trout to threatened in response to a petition to downlist Gila trout in the ESA. Although the Service did not proceed to downlist the species at that time, the State went forward with the downlisting. New Mexico also has a limited ability to protect the species' habitat through the Habitat Protection Act (Sections 17–3–1 through 17–3–11) through water pollution legislation, and tangentially through a provision that makes it illegal to dewater areas used by game fish (Section 17–1–14). Take of Gila trout in Arizona is prohibited through State statute (Arizona Revised Statute Title 17) and Commission Order (Commission Order 40). With the promulgation of the special rule, we expect that the States of Arizona and New Mexico will likely adopt regulations to allow for recreational fishing as described in the ''Description of Special Rule'' section below.

We determine that because of the protection that would be provided from Federal listing as a threatened species, along with the special rule, State regulatory protection, and habitat protection provided by the National Forests, there are adequate regulatory mechanisms to protect and enhance Gila trout populations and their habitat. Many of these protective regulations, conservation measures, and recovery actions have substantially improved the status of the Gila trout.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

When the Gila trout was listed as endangered, the most important reason for the species' decline was hybridization and competition with and/or predation by nonnative salmonids (52 FR 37424). Uncontrolled angling depleted some populations of Gila trout, which in turn encouraged stocking of hatchery-raised, nonnative species (Miller 1950; Propst 1994). Due to declining native fish populations, the

NMDGF propagated and stocked Gila trout, rainbow trout, cutthroat trout, and brown trout during the early 1900s to improve angler success. Gila trout were propagated from 1923 to 1935 at the Jenks Cabin Hatchery in the Gila Wilderness, and through 1947 at the Glenwood Hatchery, but these programs were abandoned because of the hatcheries' poor accessibility and low productivity (Service 1984). After early stocking programs were discontinued, the nonnative trout species persisted and seriously threatened the genetic purity and survival of the few remaining populations of Gila trout. Recent efforts to recover the species have included eliminating nonnative salmonids from the species' historic habitat through piscicide (fish-killing), mechanical removal, and construction of waterfall barriers to prevent nonnative reinvasion. Currently, 12 viable populations of Gila trout exist in the absence of nonnative salmonids.

We have determined that the threats posed by nonnative fish are reduced because nonnative trout are not present in the streams with original pure or replicated populations of Gila trout. Barriers are present to prevent nonnative trout from dispersing into areas occupied by pure Gila trout populations. Drought, wildfire, and floods remain as threats. However, conditions are monitored, and fish can be rescued from streams threatened by drying, fires, floods, or barrier failure, if necessary (Service 2004). As explained in the Emergency Evacuation Plan, these remote areas may be accessed through helicopter or use of horses and mules, depending upon the urgency of the situation. Flooding that occurs in an undisturbed watershed is not considered a threat to Gila trout. However, flooding that occurs after a severe fire is a threat. In a multi-agency effort, Forest Service personnel monitor fires and the potential for flooding in coordination with NMDGF and Service personnel, and then a decision is made whether to rescue fish from streams that are in danger of flash floods (Service 2004). Rescued fish may be used in broodstock development, introduced into other suitable streams, or placed back into their stream of origin once the habitat conditions are suitable. However, it may take many years for the habitat to recover to the point that it is again suitable for trout.

Summary

We believe that reclassifying the Gila trout from endangered to threatened status with a special rule is consistent with the Act, and that the special rule will further the conservation and recovery of this species. See the ''Description of Special Rule'' section below for an explanation of the conservation benefits of the special rule. Threatened status is appropriate because the number of populations has increased from 4 to 12 since recovery efforts began, and all of the threats affecting the species have been reduced and some have been eliminated. Additionally, as noted above, the wild populations of Gila trout were estimated to be fewer than 10,000 fish greater than age 1 in 1992. In 2001, almost 10 years later, the population in New Mexico had increased significantly and was estimated to be 37,000 fish (Brown *et al.* 2001). The four remnant, genetically pure, populations are protected and replicated in 109 km (67 mi) of stream, and each replicate is geographically separate from its remnant population, thereby exceeding the mileage recommended in the Recovery Plan. The Service recently completed the replication of the Whiskey Creek lineage into Langstroth Canyon on June 21, 2006. An Emergency Evacuation Plan was developed and has been implemented in 2002 and 2003 (Service 2004), and will continue to be implemented as necessary. A copy of the Emergency Evacuation Plan is available by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section). We have determined that the Gila trout is no longer in danger of extinction throughout all or a significant portion of its range and therefore no longer meets the Act's definition of endangered.

Threatened status is appropriate for the Gila trout because although the major threats have been reduced by recovery efforts and its status has improved, threats to the species still exist. Nonnative salmonids, which were the major threat to the species, do not occur in the 13 Gila trout recovery streams. We will continue to work with the States to manage nonnative salmonids. Current State and Federal regulations prohibit the take of Gila trout and few Gila trout are taken for scientific or educational purposes, in accordance with State and Federal permits under section 10(a)(1)(A) of the Act. State and Federal regulations governing take will continue after downlisting because the special rule prohibits take, except for take related to recreational fishing activities in accordance with State law. Threats due to natural disasters remain, but are mitigated by the Emergency Evacuation Plan that addresses wildfire- and drought-related impacts and discovery of nonnative salmonid invasions (Service 2004) (see ''Recovery Plans and Accomplishments'' section for a discussion of past successes). Therefore, we believe that given continued careful management, reclassification to a threatened status is appropriate.

Description of Special Rule

While the Gila trout was listed as endangered, the prohibitions described in section 9(a)(1) of the Act applied. Upon reclassification to threatened status, we have the opportunity to use the special regulations provisions of section 4(d) of the Act. When we establish a special regulation (alternatively known as a special rule), the general prohibitions in 50 CFR 17.31 for threatened species do not apply to the subject species, and the special rule contains all the prohibitions and exceptions that do apply. Typically, such special rules incorporate some of the prohibitions contained in 50 CFR 17.31, with exceptions for certain activities.

In 1978, we finalized regulations applying most of the take prohibition provisions to threatened wildlife (50 CFR 17.31). These procedures were established on April 28, 1978 (43 FR 18181), and amended on May 31, 1979 (44 FR 31580) and on March 4, 2005 (70 FR 10493). Reclassifying the species will have no effect on the regulations regarding protection and recovery of Gila trout, except for take related to recreational fishing as provided in the special rule. Beginning on the effective date of this reclassification rule, the special rule will enable the States of Arizona and New Mexico to promulgate regulations to allow recreational fishing for Gila trout; however, actual angling for Gila trout will not be allowed until those State regulations are in effect.

The special rule will apply to Gila trout found in New Mexico and Arizona and will allow recreational fishing of Gila trout in specified waters, not including the four remnant populations identified in Table 1 above. As noted elsewhere, changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout and consistent with the goals of the Recovery Plan for the species (Service 2003). For the reasons explained herein, it is no longer necessary or advisable for the conservation of the Gila trout to prohibit take caused by regulated fishing. In general, establishment of recreational opportunities can be developed in recovery waters that have stable or increasing numbers of individuals (as measured by population surveys) and

where habitat conditions are of sufficient quality to support viable populations of Gila trout (populations having annual recruitment, size structure indicating multiple ages, and individuals attaining sufficient sizes to indicate 3 to 7 years of survival). In addition, recreational opportunities may be developed in non-recovery waters. According to NMDGF the process by which a stream is designated a fishery involves: (1) Carefully evaluating each stream; (2) determining whether the stream can sustain angling and how much (this evaluates a suite of different angling pressures); (3) making a recommendation to designate the stream a fishery; and (4) monitoring to insure there are no detrimental effects to the population from angling. If monitoring indicates a negative effect on the conservation of Gila trout, the fishing regulations can be amended or the fishery can be closed. The process by which AGFD designates a fishery is very similar and can be found on the AGFD Web site at *http://www.azgfd.gov/inside_azgfd/rulemaking_process.shtml.* The principal effect of the special rule is to allow take in accordance with fishing regulations enacted by New Mexico and Arizona. We will collaborate with the States to develop fishing regulations that are adequate to protect and conserve Gila trout. We anticipate New Mexico and Arizona will institute special regulations to allow recreational fishing of Gila trout in certain waters.

This rule is not an irreversible action on our part. Reclassifying the Gila trout back to endangered status is possible and may be done through an emergency rule if a significant risk to the well-being of the Gila trout is determined to exist, or through a proposed rule should changes occur that alter the species' status or significantly increase the threats to its survival. Because changes in status or increases in threats (*e.g.*, wildland fire effects, nonnative salmonid invasion, barrier failure, drought) might occur in a number of ways, criteria that would trigger another reclassification proposal cannot be specified at this time.

The special 4(d) rule for recreational fishing is based on the best available science. We anticipate that over time, as a result of additional studies and as the analyses of monitoring data become available, some changes to these regulations may be required (*e.g.*, closure of areas previously permitted for fishing, or opening of new areas). Changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management of Gila trout as a recreational species will be consistent with the goals of the Recovery Plan for the species (Service 2003). These changes could result in an increase or decrease in restrictions on recreational fishing as determined by State and Service personnel in collaboration.

Conservation of the Gila Trout

As noted above, a special rule for a threatened species shall be issued by the Secretary when it is deemed necessary and advisable to provide for the ''conservation'' of the species. The term conservation, as defined in section 3(3) of the Act, means to use and the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

The authority to take endangered or threatened species to relieve population pressures is applicable to our recovery efforts for Gila trout. We currently have active captive propagation of Gila trout at the Mora National Fish Hatchery and Technology Center, guided by a genetic broodstock management plan. Within the near future, recovery augmentation and broodstock management needs for these two lineages will likely require the production of up to 20,000 fish. Ensuring the genetic diversity of these 20,000 fish through implementation of the broodstock management plan will result in the simultaneous production of about 100,000 excess Gila trout. These excess Gila trout are produced as a result of the specific controlled propagation techniques required to ensure the genetic quality of the Gila trout needed for recovery. Currently, hatchery-reared and rescued Gila trout are stocked only in streams designated for recovery that are closed to angling. If the excess Gila trout were to be stocked into the designated recovery streams, this might cause overcrowding and attendant problems. The streams designated for recovery are small, high-elevation streams, which do not support great numbers of fish (*i.e.*, they have a low carrying capacity). While the numbers of Gila trout stocked into recovery streams would vary each year, depending on circumstances such as wildfire, we expect that the number of Gila trout produced would greatly exceed the carrying capacity of the recovery streams. We believe that placing excess Gila trout in streams (*e.g.*, lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) and lakes (*e.g.*, Bill Evans Lake, Lake Roberts, Snow Lake) that are currently not identified for use as part of the long-term Gila trout recovery strategy would avoid any potential overcrowding in the designated recovery streams. Without a 4(d) rule in place that allows for recreational fishing, Gila trout could not be stocked in nonrecovery streams that are open to angling due to the take prohibitions of the Act that apply to endangered and threatened species. In summary, this final 4(d) rule for Gila trout will avoid overcrowding in the designated recovery streams by allowing excess Gila trout to be placed in streams open to angling. If excess Gila trout are not used for stocking in nonrecovery streams, we would be required to euthanize all genetically pure, excess Gila trout because of limited space and resources to maintain them at captive propagation facilities.

Below we provide additional reasons why the 4(d) rule provides for the conservation of the Gila trout beyond that of relieving potential population pressures due to overcrowding. Specifically, this special 4(d) rule contributes to the conservation of the Gila trout through: (1) Providing eligibility for Federal sport fishing funds, (2) increasing the number of wild populations, (3) enhancing the ability to monitor populations, and (4) creating goodwill and support in the local community. Each of these topics is discussed in detail below.

Expansion of the Population

There are several benefits to stocking fish in streams and lakes. First, having Gila trout in additional stream miles and lakes will increase the overall security of the species. If Gila trout are introduced into larger, higher order streams that are less subject to catastrophic events and where refugia are more abundant, these fish are likely to persist even if a large-scale disturbance, such as fire, were to occur. Despite these benefits, it is probable that some Gila × rainbow trout hybrids would be produced and that Gila trout might also be lost to predation by brown trout; however, the benefits far outweigh any potential negative aspects of this action. Second, areas directly below existing barriers could also be targeted for stocking. These reaches of stream would then act as ''buffers'' between

pure Gila trout populations and stream reaches contaminated with nonnative trout.

Finally, if Gila trout were stocked in additional waters, the angling public would be exposed to, and become more familiar with, Gila trout's natural beauty and value as a sport fish, thereby increasing public support for the program. As noted above, there are several lakes (*e.g.*, Bill Evans Lake, Lake Roberts, Snow Lake) and stream segments (*e.g.*, lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) that are not currently identified in long-term recovery strategies and that could provide quality angling opportunities for Gila trout. Within Arizona, Verde River, Oak Creek, Wet Beaver Creek, and West Clear Creek have potential for developing angling opportunities for Gila trout. Reservoirs include Watson, Willow, Mingus, and Deadhorse.

Eligibility for Funds

Once a stream or lake occupied by Gila trout is opened to angling, the trout can be designated as a ''sport fish'' and the potential funding available to Gila trout restoration projects may increase. For example, as a sport fish, the Gila trout would be eligible for funding through the Sport Fish Restoration Program (SFRP) for management activities, including hatchery production associated with the Gila trout. In fiscal year 2004, NMDGF received $3,258,275, and AGFD received $3,556,597, through the SFRP. The specific amount that would be spent on the Gila trout using these funds would depend on the priorities of the NMDGF and the AGFD; however, with Gila trout recognized as a sport fish, the States would have this additional funding source available for restoration projects (P. Mullane, U.S. Fish and Wildlife Service, in litt. 2005). In contrast, the amount of Service money spent on Gila trout in 2004 is estimated at $137,500.

In Arizona, approximately $2.1 million dollars (including matching dollars) are available to sport fishing projects (L. Riley, ADGF, pers. comm. 2004). In addition, about $1.7 million dollars are available for the culture (hatchery production) of sport fish (L. Riley, ADGF, pers. comm. 2004). With increased hatchery production and establishment of new populations in additional waters, recovery goals could be reached sooner and more angling opportunities could be provided to the public. An increase in the amount of money available for nonnative trout removal, barrier construction, habitat restoration, and hatchery production would aid in recovery and delisting of the Gila trout.

Monitoring and Education

Monitoring is critical to the successful conservation of the Gila trout. We will work closely with the States of New Mexico and Arizona to develop evaluation and assessment programs to gather population data (*e.g.*, size of fish caught, number caught and released), data on the survival of released fish, and angler-related data (*e.g.*, time spent fishing, streams fished, catch rate, hooking and handling mortality) on streams and lakes. Our ability to evaluate these data is essential to the development of management strategies to ensure the long-term conservation of Gila trout. Using a population viability model that examined mortality from various sources, Brown *et al.* (2001) found that up to a 15 percent angling mortality of adult Gila trout per year had no effect on population viability. Although models never perfectly incorporate the complexity of natural systems and are only an approximation based on many assumptions (Schamberger and O'Neil 1986), they are useful tools that can be used by managers to improve recovery strategies. With information gathered from streams and lakes open to angling, the impact of angling on population dynamics could be tested directly, leading to better management of the populations, especially as the species moves closer to recovery.

Education is also critical to the successful conservation of the Gila trout because once the Gila trout is recovered and delisted, it will need to be properly managed to maintain adequate populations. We will work with the States to develop public education programs and materials on proper handling and release of Gila trout to reduce hooking and handling mortality in catch-and-release areas, and on species identification for educational purposes. Educating the public on the uniqueness of the Gila trout, its limited distributional range, and its value as one of New Mexico and Arizona's few native trout is expected to build support for the conservation of the species.

Public Support

As mentioned above, community support is essential to the recovery of Gila trout. Some members of the public have opposed Gila trout recovery efforts because of the loss of angling opportunities for nonnative trout through the renovation of streams (Brooks *et al.* 2000; Blue Earth Ecological Consultants 2001). As stated earlier, we believe that adequate regulatory mechanisms are in place; however, illegal angling has occurred in streams officially closed to angling (NMDGF 1997a, b), and unauthorized stocking of nonnative salmonids into streams either currently occupied by Gila trout or proposed for reintroductions have been documented in recent years (NMDGF 1998; Brooks *et al.* 2000). It is likely that because Gila trout evolved in this ecosystem and are adapted to it, they will produce more stable populations and a more dependable fishery than nonnative trout (Turner 1986). There is also a demonstrated high public interest in the future angling opportunities for Gila trout (NMDGF 1997a, b). Therefore, we believe that the availability of recreational fishing for Gila trout will increase public support for the conservation and recovery of the species (NMDGF 1997a).

In the 1996 Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities (June 3, 1996; 61 FR 27978), we note that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well being. Accordingly, and to implement Executive Order 12962, we are aggressively working to promote compatibility and reduce conflict between administration of the Act and recreational fisheries. Carefully regulated recreational fishing is not likely to impact Gila trout populations, and can promote awareness and conservation of the species by maintaining public support for conservation.

In conclusion, Gila trout will continue to be protected under the Act, but reclassification from endangered to threatened with a special 4(d) rule will allow recreational fishing opportunities to be developed in recovery streams, provide an outlet for fish excess to recovery needs, and increase public awareness and appreciation of Gila trout. Additionally, the 4(d) rule will provide New Mexico and Arizona greater flexibility in the management of Gila trout, increase the potential funding for population expansion and habitat restoration, allow for the expansion and greater security of populations, enhance our ability to monitor and manage populations, and increase the public's knowledge and appreciation of this native trout. On the basis of our experience with Gila trout recovery, we expect an increase in public acceptance and greater

opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between endangered species' conservation and humans. We believe this special rule is consistent with the conservation of the species and that it will speed recovery of the Gila trout. Therefore, this special rule is necessary and advisable to provide for the conservation of the Gila trout.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, and groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed and implemented for the conservation of the species, unless a finding is made that such a plan will not promote the conservation of the species. Most of these measures have already been successfully applied to Gila trout.

Under this rule, the Act will continue to apply to the Gila trout. However, this rule would change the classification of the Gila trout from endangered to threatened, and allow New Mexico and Arizona to promulgate special regulations allowing recreational fishing of Gila trout in designated streams. The protection required of Federal agencies and the prohibitions against taking and harm are discussed above in the *Summary of Factors Affecting the Species* section, Factor D, the inadequacy of existing regulatory mechanisms.

Section 7(a) of the Act requires Federal agencies to evaluate actions they fund, authorize, or carry out with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) In accordance with section 9(b)(1) of the Act, the possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of specimens of this taxon that were collected prior to the listing of this species (December 28, 1973);

(2) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, grazing management, recreational trail or forest road development or use, road construction, prescribed burns, timber harvest, or piscicide application (fish-killing agent)), when such activities are conducted in accordance with a biological opinion from us on a proposed Federal action;

(3) Activities that may result in take of Gila trout when the action is conducted in accordance with a valid permit issued by us pursuant to section 10 of the Act;

(4) Recreational activities such as sightseeing, hiking, camping, and hunting in the vicinity of Gila trout populations that do not destroy or significantly degrade Gila trout habitat as further defined in the Forest Service and State management strategies for the occupied areas; and

(5) Angling activities in accordance with authorized fishing regulations for Gila trout in New Mexico and Arizona.

We believe that the following actions involving Gila trout could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Take of Gila trout without a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Gila trout;

(3) Use of piscicides, pesticides, or herbicides that are not in accordance with a biological opinion issued by us pursuant to section 7 of the Act, or a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act;

(4) Intentional introduction of nonnative fish species (*e.g.*, rainbow and brown trout) that compete or hybridize with or prey upon Gila trout;

(5) Destruction or alteration of Gila trout habitat that results in the destruction or significant degradation of cover, channel stability, substrate composition, increased turbidity, or temperature that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions; and

(6) Destruction or alteration of riparian and adjoining uplands of waters supporting Gila trout by timber harvest, fire, poor livestock grazing practices, road development or maintenance, or other activities that result in the destruction or significant degradation of cover, channel stability, or substrate composition, or in increased turbidity or temperature, that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Requests for copies of the regulations concerning listed wildlife or inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6649; facsimile 505/248–6922).

Summary of Changes From the Proposed Rule

The final rule includes two changes from the proposed rule to clarify some issues that were discussed in the preamble to the proposed rule but not included in the actual rule language. These clarify that the four relict populations will not be opened to fishing and any changes to State recreational fishing regulations will be

made by the States in collaboration with the Service.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Office of Management and Budget has approved our information collection associated with the issuance of permits for the take of Gila trout, and assigned OMB Control Number 1018–0094, which expires September 30, 2007. This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule making in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Section 7 Consultation

The Service is not required to consult on this rule under section 7(a)(2) of the Act. The development of protective regulations for a threatened species are an inherent part of the section 4 listing process. The Service must make this determination considering only the ''best scientific and commercial data available.'' A necessary part of this listing decision is also determining what protective regulations are ''necessary and advisable to provide for the conservation of [the] species.'' Determining what prohibitions and authorizations are necessary to conserve the species, like the listing determination of whether the species meets the definition of threatened or endangered, is not a decision that Congress intended to undergo section 7 consultation.

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations with recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. There were no tribal lands affected by this rulemaking.

References Cited

A complete list of all references cited in this rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Trout, Gila'' under ''FISHES'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Trout, Gila	*Oncorhynchus gilae*	U.S.A. (AZ, NM)	Entire	T	1,757	NA	17.44(z)
*	*	*	*	*	*		*

■ 3. Amend § 17.44 by adding a new paragraph (z) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(z) Gila trout (*Oncorhynchus gilae*).

(1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in paragraph (z)(1)(i) of this section.

(2) In the following instances you may take Gila trout in accordance with applicable State fish and wildlife conservation laws and regulations to protect this species in the States of New Mexico or Arizona:

(i) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(ii) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other

conservation purposes consistent with the Endangered Species Act.

(3) The four relict populations of Gila trout (Main Diamond Creek, South Diamond Creek, Spruce Creek, and Whiskey Creek) will not be opened to fishing.

(4) Any changes to State recreational fishing regulations will be made by the States in collaboration with the Service.

(5) Any violation of State applicable fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act of 1973, as amended.

Dated: July 6, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–6215 Filed 7–17–06; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 71, No. 137
Tuesday, July 18, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2006–25376; Notice No. 06–10]

RIN 2120–AI74

Airworthiness Standards: Safety Analysis

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to amend the safety analysis type certification standard for turbine aircraft engines. This proposal harmonizes the FAA's type certification standard for safety analysis with the corresponding standards of the Joint Aviation Authorities (JAA) and the European Aviation Safety Agency (EASA). The proposed rule would establish a nearly uniform safety analysis standard for turbine aircraft engines certified in the United States under Part 33 of Title 14 of the Code of Federal Regulations (14 CFR part 33) and in European countries under Joint Aviation Requirements-Engines (JAR–E) and Certification Specifications-Engines (CS–E), thereby simplifying airworthiness approvals for import and export.

DATES: Send your comments on or before October 16, 2006.

ADDRESSES: You may send comments, identified by Docket No. FAA–2006–25376, using any of the following methods:

- *DOT Docket Web site:* Got to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information that you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Azevedo, Chief Scientist & Technical Advisor, Safety Analysis, ANE–104, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone: (781) 238–7117; facsimile: (781) 238–7199; e-mail: *ann.azevedo@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, 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 this proposed rulemaking. 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 preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing 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*.

Before acting on this proposal, 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 this proposal 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 to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

We are proposing to amend the safety analysis type certification standard for turbine aircraft engines. This proposal

harmonizes the FAA's type certification standard on this issue with corresponding standards of the JAA and EASA. The proposed changes, if adopted, would establish a nearly uniform safety analysis standard for turbine aircraft engines certified in the United States under part 33 and in European countries under JAR–E and CS–E, thereby simplifying airworthiness approvals for import and export.

Aviation Rulemaking Advisory Committee (ARAC)

The FAA is committed to the harmonization of part 33 with JAR–E and CS–E. In August 1989, as a result of that commitment, the FAA Engine and Propeller Directorate participated in a meeting with the JAA, the Aerospace Industries Association (AIA), and the European Association of Aerospace Industries (AECMA). The purpose of the meeting was to establish a philosophy, guidelines, and a working relationship regarding the resolution of issues identified as needing harmonization, including the identification of the need for new standards. The safety and failure analysis standards were identified as a Significant Regulatory Difference in need of harmonization. All parties agreed to work in a partnership to jointly address the harmonization effort. This partnership was later expanded to include Transport Canada, the airworthiness authority of Canada.

The FAA established the ARAC to provide advice and recommendations to the FAA on the full range of its rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations and practices with its trading partners in Europe and Canada.

In a notice published on October 20, 1998 (63 FR 56059), the FAA asked ARAC, Transport Airplane and Engine Issues Group (TAEIG), to provide advice and recommendations on safety and failure analysis standards. This proposed rule and associated advisory material is based on recommendations resulting from that task.

The Safety Analysis Standard

The ultimate objective of the safety analysis standard is to ensure that the collective risk from all engine failure conditions is acceptably low. An acceptable total engine design risk is achieved by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

Aircraft-level requirements for individual failure conditions may be more severe than the engine-level requirements. Early coordination between the engine manufacturer, the aircraft manufacturer, and the appropriate FAA certification offices, will provide assurance that the engine will be eligible for installation in the aircraft. Early coordination will also ensure that the engine applicant is aware of any additional and possibly more restrictive aircraft standards that will apply to the engine in the installed condition.

Differences Between Part 33 and JAR–E Earlier Requirements

The following comparisons show differences between part 33 and the JAR–E as they existed before the requirements were harmonized. JAA subsequently revised the JAR–E on May 1, 2003, as a result of harmonization discussions with the FAA. EASA incorporated the harmonized rule into its certification standards as CS–E 510.

JAR–E 510 failure analysis	Existing section 33.75 safety analysis
Required a summary listing of all failures that result in major or hazardous effects, along with an estimate of the probability of occurrence of these major and hazardous effects.	Requires an assessment that any probable malfunction, failure, or improper operation will not lead to four specific hazards of undefined severity.
Required a list of assumptions contained within the failure analysis and the substantiation of those assumptions.	[Most of the assumptions are covered by other paragraphs in part 33].
Referenced the specific hazard of toxic bleed air.	[This hazard is not mentioned in § 33.75].
Required analysis to examine malfunctions and single and multiple failures.	Requires analysis to examine malfunctions and single and multiple failures and examination of improper operation.

Outcome of Harmonization Effort

This proposed harmonized standard uses the framework of the current JAR–E 510/CS–E 510, while including specific hazards as in the current § 33.75.

Section-by-Section Discussion of the Proposals

Under § 33.5, we propose a new paragraph (c) to reflect the new requirement for the safety analysis assumptions to be included in the engine's installation and operation manual.

We propose to revise § 33.74 to reflect the new organization of the revised § 33.75, including the addition of new specific conditions to be evaluated.

We propose to rewrite § 33.75 using the format of the current JAA/EASA equivalent rule to reflect the harmonization effort.

We propose to revise § 33.76 to reference the specific engine conditions listed as hazardous effects within the proposed § 33.75.

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, including minimum safety standards for aircraft engines. This proposed rule is within the scope of that authority because it updates the existing regulations for safety analysis type certification standard for turbine aircraft engines.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has reviewed the ICAO Standards and Recommended Practices and identified no differences with these proposed regulations.

Initial Economic Evaluation, Initial Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rulemaking

The FAA estimates that over the next ten years, the total quantitative benefits from implementing this proposed rule are roughly $0.5 million ($0.4 million present value). In contrast to these potential benefits, the estimated cost of compliance is approximately $0.3 million ($0.2 million discounted).

Accordingly, the proposed rule is cost-beneficial due to the overall reduction in compliance cost while maintaining the same level of safety.

Who Is Potentially Affected by This Rulemaking

Part 33 Engine Manufacturers.

Assumptions and Sources of Information

Period of analysis—2006 through 2016.

Discount rate—7%.

Compensation Rates, Economic Values for FAA Investment and Regulatory Decisions, A Guide, May 2005.

Benefits of This Rule

We evaluate benefits from adopting European certification requirements (often referred to as harmonization) and express them as cost savings. The cost savings are the result of the number of hours saved simplifying the certification process while maintaining the same level of safety.

The total benefits of this proposal are $0.5 million ($0.4 million present value). The benefits are for new type certificates $59,360 ($43,102 present value), and benefits for amended type certificates of $426,362 ($309,585 present value).

Costs of This Rule

One part 33 turbine engine manufacturer informed the FAA that it would incur certification costs because of this proposed rule. This proposed rule would require an additional 1,000 engineering hours for certification of one new engine every two years. The estimated total bi-annual cost of $54,210 equals 1,000 hours multiplied by the hourly compensation rate of $54.21.[1] The total cost over a ten-year period is $271,050 ($196,812 present value).

Industry representatives for remaining firms informed the FAA that their firms currently meet both the FAA and the European requirements. Because these firms currently meet both sets of requirements, no extra tests would be required because of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In our small entity classification, the FAA uses the size standards from the Small Business Administration. Only one manufacturer would incur costs because of this proposed rule. Because this manufacturer employs more than 1,500 employees, it is not considered a small entity. The remaining part 33 engine manufacturers would not incur costs associated with this proposed rule. These manufacturers would in fact realize a prorated portion of the cost saving resulting from a single harmonized certification procedure.

Consequently, the FAA certifies the rule will not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal

[1] Economic Values for FAA Investment and Regulatory Decisions, A Guide, December 2004. Table 7–1 lists the total compensation for Aircraft Manufacturing (white collar occupation) as $49.04. To express 2003 dollars in 2006 dollars we use the estimated average GDP annual percent change of 3.4%.

agencies from establishing any 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. This proposed rule considers and incorporates an international standard as the basis of a FAA regulation. Thus the proposed rule complies with the Trade Agreements Act of 1979 and does not create unnecessary obstacles to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act environmental impact statement in the absence of extraordinary circumstances. We determined that this proposed rule qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

We analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 33 of Title 14 Code of Federal Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for part 33 continues to read as follows:

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

2. In § 33.5, add paragraph (c) to read as follows:

§ 33.5 Instruction manual for installing and operating the engine.

* * * * *

(c) *Safety analysis assumptions.* The assumptions of the safety analysis as described in § 33.75(d) with respect to the reliability of safety devices, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures that are outside the control of the engine manufacturer.

3. Revise § 33.74 to read as follows:

§ 33.74 Continued rotation.

If any of the engine main rotating systems continue to rotate after the engine is shutdown for any reason while in flight, and if means to prevent that continued rotation are not provided, then any continued rotation during the maximum period of flight, and in the flight conditions expected to occur with that engine inoperative, must not result in any condition described in § 33.75(g)(2)(i) through (vi) of this part.

4. Revise § 33.75 to read as follows:

§ 33.75 Safety analysis.

(a)(1) The applicant must analyze the engine, including the control system, to assess the likely consequences of all failures that can reasonably be expected to occur. This analysis will take into account, if applicable:

(i) Aircraft-level devices and procedures assumed to be associated with a typical installation. Such assumptions must be stated in the analysis.

(ii) Consequential secondary failures and latent failures.

(iii) Multiple failures referred to in paragraph (d) of this section or that result in the hazardous engine effects defined in paragraph (g)(2) of this section.

(2) The applicant must summarize those failures that could result in major engine effects or hazardous engine effects, as defined in paragraph (g) of this section, and estimate the probability of occurrence of those effects.

(3) The applicant must show that hazardous engine effects are predicted to occur at a rate not in excess of that defined as extremely remote (probability range of 10^{-7} to 10^{-9} per engine flight hour). Since the estimated probability for individual failures may be insufficiently precise to enable the applicant to assess the total rate for hazardous engine effects, compliance may be shown by demonstrating that the probability of a hazardous engine effect arising from an individual failure can be predicted to be not greater than 10^{-8} per engine flight hour. In dealing with probabilities of this low order of magnitude, absolute proof is not possible, and compliance may be shown by reliance on engineering judgment and previous experience combined with sound design and test philosophies.

(4) The applicant must show that major engine effects are predicted to occur at a rate not in excess of that defined as remote (probability range of 10^{-5} to 10^{-7} per engine flight hour).

(b) If significant doubt exists, the FAA may require that any assumption as to the effects of failures and likely combination of failures be verified by test.

(c) The primary failure of certain single elements cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous engine effects, then compliance may be shown by reliance on the prescribed integrity requirements of this part. These instances must be stated in the safety analysis.

(d) If reliance is placed on a safety system to prevent a failure from progressing to hazardous engine effects, the possibility of a safety system failure in combination with a basic engine failure must be included in the analysis. Such a safety system may include safety devices, instrumentation, early warning devices, maintenance checks, and other similar equipment or procedures. If items of a safety system are outside the control of the engine manufacturer, the assumptions of the safety analysis with

respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation instructions under § 33.5 of this part.

(e) If the safety analysis depends on one or more of the following items, those items must be identified in the analysis and appropriately substantiated.

(1) Maintenance actions being carried out at stated intervals. This includes the verification of the serviceability of items that could fail in a latent manner. When necessary to prevent hazardous engine effects, these maintenance actions and intervals must be published in the instructions for continued airworthiness required under § 33.4 of this part. Additionally, if errors in maintenance of the engine, including the control system, could lead to hazardous engine effects, the appropriate procedures must be included in the relevant engine manuals.

(2) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manual.

(3) The provisions of specific instrumentation not otherwise required.

(f) If applicable, the safety analysis must also include, but not be limited to, investigation of the following:

(1) Indicating equipment;

(2) Manual and automatic controls;

(3) Compressor bleed systems;

(4) Refrigerant injection systems;

(5) Gas temperature control systems;

(6) Engine speed, power, or thrust governors and fuel control systems;

(7) Engine overspeed, overtemperature, or topping limiters;

(8) Propeller control systems; and

(9) Engine or propeller thrust reversal systems.

(g) Unless otherwise approved by the FAA and stated in the safety analysis, for compliance with part 33, the following failure definitions apply to the engine:

(1) An engine failure in which the only consequence is partial or complete loss of thrust or power (and associated engine services) from the engine will be regarded as a minor engine effect.

(2) The following effects will be regarded as hazardous engine effects:

(i) Non-containment of high-energy debris;

(ii) Concentration of toxic products in the engine bleed air intended for the cabin sufficient to incapacitate crew or passengers;

(iii) Significant thrust in the opposite direction to that commanded by the pilot;

(iv) Uncontrolled fire;

(v) Failure of the engine mount system leading to inadvertent engine separation;

(vi) Release of the propeller by the engine, if applicable; and

(vii) Complete inability to shut the engine down.

(3) An effect whose severity falls between those effects covered in paragraphs (g)(1) and (g)(2) of this section will be regarded as a major engine effect.

5. Amend § 33.76 to revise paragraph (b)(3) to read as follows:

§ 33.76 Bird ingestion.

* * * * *

(b) * * *

(3) Ingestion of a single large bird tested under the conditions prescribed in this section must not result in any condition described in § 33.75(g)(2) of this part.

* * * * *

Issued in Washington, DC, on July 13, 2006.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. E6–11372 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0051; FRL–8198–9]

RIN 2060–AJ78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA is reopening the comment period for certain portions of the proposed amendments to National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, published on December 2, 2005. The comment period is being reopened until August 1, 2006. The portions of the proposed amendments for which we are reopening the comment period are the proposed emission standards for mercury, hydrogen chloride, and total hydrocarbons.

DATES: Comments must be received on or before August 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0051, by one of the following methods: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2002–0051.
- *Fax:* (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2002–0051.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2002–0051, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2002–0051, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0051. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2002–0051, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2002–0051, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, NC 27711; telephone number (919) 541–5605; facsimile number (919) 541–3207; e-mail address *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially affected by the proposed amendments to the national emission standards for hazardous air pollutants for the manufacturing of portland cement are those that manufacture portland cement. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS [1]	Examples of regulated entities
Industry	32731	Owners or operators of portland cement manufacturing plants.
State	32731	Owners or operators of portland cement manufacturing plants.
Tribal Associations	32731	Owners or operators of portland cement manufacturing plants.
Federal Agencies	None	None.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may potentially be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.1340 of the rule. If you have questions regarding the applicability of the proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the address listed in the **ADDRESSES** section of this document. Clearly mark the part or all the information you claim to be CBI. For CBI information submitted on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/*. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Reopening of Comment Period

On December 2, 2005, EPA proposed amendments to the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry. (70 FR 72330). Among other things, we there proposed to amend the emission standards for mercury, hydrogen chloride, and total hydrocarbons.

In response to a request to reopen the comment period to address these proposed standards, EPA is reopening the comment period for a period of two weeks. This solicitation is limited to the standards for mercury, hydrogen chloride, and total hydrocarbons.

How can I get copies of the proposed amendments and other related information?

EPA has established the official public docket for the proposed rulemaking under docket ID No. EPA–HQ–OAR–2002–0051. Information on how to access the docket is presented above in the **ADDRESSES** section. In addition, information may be obtained from the Web page for the proposed

rulemaking at: *http://www.epa.gov/ttn/atw/pcem/pcempg.html.*

Dated: July 5, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E6–11334 Filed 7–17–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 12, 25, 52

[FAR Case 2005–011; Docket 2006–0020; Sequence 3]

RIN: 9000–AK42

Federal Acquisition Regulation; FAR Case 2005–011, Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address the issues of contractor personnel that are providing support to the mission of the United States Government in the theater of operations or at a diplomatic or consular mission outside the United States, but are not covered by the DoD clause for contractor personnel authorized to accompany the U.S. Armed Forces.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before September 18, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005–011 by any of the following methods:

• Federal eRulemaking Portal: *http://acquisition.gov.* Follow the instructions for submitting comments.

• Agency Web site: *http://acquisition.gov/far/ProposedRules/proposed.htm.* Click on the FAR case number to submit comments.

• E-mail: *farcase.2005–011@gsa.gov.* Include FAR case 2005–011 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005–011 in all correspondence related to this case. All comments received will be posted without change to *http://acquisition.gov/far/ProposedRules/proposed.htm,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Linda Nelson, Procurement Analyst, at (202) 501–1900. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAR case 2005–011. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to create a new FAR Subpart 25.3 to address issues relating to contractors outside the United States, including new section 25.302, Contractor personnel in a theater of operations or at a diplomatic or consular mission outside the United States. The rule also proposes a new clause entitled ''Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission Outside the United States.''

The clause applies when contractor personnel are employed outside the United States—

• In a theater of operations during—

• Contingency operations;

• Humanitarian or peacekeeping operations;

• Other military operations; or

• Military exercises designated by the combatant commander; or

• At a diplomatic or consular mission, when specified by the chief of mission.

This new clause clarifies that contractor personnel are civilians. Contractor personnel, except private security contractor personnel, are not authorized to use deadly force against enemy armed forces other than in self defense. Private security contractor personnel are only authorized to use deadly force when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract. It is the responsibility of the Combatant Commander to ensure that private security contract mission statements do not authorize the performance of any inherently Governmental military functions, such as preemptive attacks, or any other types of attacks.

The clause also addresses such issues as responsibility for logistical and security support, compliance with laws and regulations, preliminary personnel requirements, processing and departure points, personnel data lists, removal of contractor personnel, authorization of weapons and ammunition, vehicle or equipment licenses, wearing of military clothing and protective equipment, evacuation, personnel recovery, notification and return of personal effects, mortuary affairs, changes in place of performance or Government-furnished facilities, equipment, material, services, or site, and flowdown of the clause to subcontracts.

In preparation of this proposed rule, the Councils reviewed the proposed rule published by the Department of State in the **Federal Register** on December 22, 2004 (69 FR 76660). The Councils also considered the final rule issued by the Department of Defense on May 5, 2005 (70 FR 23790) (DFARS Case 2003–D087, Contractor Personnel Supporting a Force Deployed Outside the United States).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to relieve the current perceived burden on contractors operating in a contingency environment without consistent guidance or a standardized clause. By establishing a standardized clause spelling out the standardized rules, this rule effectively reduces the burden on small business. It establishes a framework within which it will be easier for contractors to operate overseas. In addition, the availability of Government departure centers in the United States will make it easier for small businesses to meet all pre-departure requirements. An Initial Regulatory Flexibility Analysis (IRFA) has therefore not been prepared. The Councils will also consider comments from small entities concerning the affected FAR parts 2, 7, 12, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties should submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2005–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 12, 25, and 52

Government procurement.

Dated: July 10, 2006.

Linda K. Nelson

Acting Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 12, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 12, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101(b)(2)by adding, in alphabetical order, the definitions ''At a diplomatic or consular mission'' and ''Theater of operations'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

At a diplomatic or consular mission means any location outside the United States where a contractor performs a contract administered by Federal agency personnel subject to the direction of a Chief of Mission pursuant to Section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

* * * * *

Theater of operations means an area defined by the combatant commander for the conduct or support of specific operations.

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.105 by revising paragraphs (b)(13)(i) and (b)(19) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(13) *Logistics consideration.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3), support for contracts to be performed in a theater of operations or at a diplomatic or consular mission (see 25.302–3); and distribution of commercial items;

* * * * *

(19) *Other considerations.* Discuss, as applicable, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, special requirements for contracts to be performed in a theater of operations or at a diplomatic or consular mission, and any other matters germane to the plan not covered elsewhere.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Revise section 12.301 by adding paragraph (b)(5) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b)(5) Insert the clause at 52.225–XX, Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission outside the United States, as prescribed in 25.302–5.

* * * * *

PART 25—FOREIGN ACQUISITION

5. Revise section 25.000 to read as follows:

25.000 Scope of part.

(a) This part provides policies and procedures for—

(1) Acquiring foreign supplies, services, and construction materials; and

(2) Performance of contractor personnel outside the United States.

(b) It implements the Buy American Act, trade agreements, and other laws and regulations.

* * * * *

6. Add Subpart 25.3 to read as follow:

Subpart 25.3—Contractors Outside the United States

Sec

Subpart 25.3—Contractors Outside the United States

25.301 [Reserved]

25.302 Contractor personnel in a theater of operations or at a diplomatic or consular mission outside the United States.

25.302–1 Scope.

This section applies to contracts requiring contractor personnel to perform outside the United States—

(a) In a theater of operations during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations;

(3) Other military operations; or

(4) Military exercises designated by the combatant commander; or

(b) At a diplomatic or consular mission, when designated by the chief of mission.

25.302–2 Definitions.

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96–465) to be temporarily in charge of such a mission or office.

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Other military operations means a range of military force responses that can be projected to accomplish assigned tasks. Such operations may include one or a combination of the following: civic action, humanitarian assistance, civil affairs, and other military activities to develop positive relationships with other countries; confidence building and other measures to reduce military tensions; military presence; activities to convey messages to adversaries; military deceptions and psychological operations; quarantines, blockades, and harassment operations; raids; intervention operations; armed conflict involving air, land, maritime, and strategic warfare operations; support for law enforcement authorities to counter international criminal activities (terrorism, narcotics trafficking, slavery, and piracy); support for law enforcement authorities to suppress domestic rebellion; and support for insurgency, counterinsurgency, and civil war in foreign countries.

25.302–3 Government support.

(a) Generally, contractors are responsible for providing their own logistical and security support,

including logistical and security support for their employees. The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that Government provision of such support is needed to ensure continuation of essential contractor services and adequate support cannot be obtained by the contractor from other sources.

(b) The contracting officer shall specify in the contract the exact support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

25.302–4 Weapons.

The contracting officer shall follow agency procedures and the weapons policy established by the combatant commander or the chief of mission when authorizing contractor personnel to carry weapons (see paragraph (i) of the clause at 52.225–XX, Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission outside the United States).

25.302–5 Contract clauses.

Insert the clause at 52.225–XX, Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission outside the United States, in solicitations and contracts when contract performance requires that contractor personnel be available to perform outside the United States—

(a) In a theater of operations during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations;

(3) Other military operations; or

(4) Military exercises designated by the combatant commander; or

(b) At a diplomatic or consular mission, when specified by the chief of mission.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Add section 52.225–XX to read as follows:

52.225–XX Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission outside the United States.

As prescribed in 25.302–5, insert the following clause:

CONTRACTOR PERSONNEL IN A THEATER OF OPERATIONS OR AT A DIPLOMATIC OR CONSULAR MISSION OUTSIDE THE UNITED STATES ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])

(a) *Definitions.* As used in this clause—

At a diplomatic or consular mission means any location outside the United States where a Contractor performs a contract administered by Federal agency personnel subject to the direction of a Chief of Mission pursuant to Section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96–465) to be temporarily in charge of such a mission or office.

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Other military operations means a range of military force responses that can be projected to accomplish assigned tasks. Such operations may include one or a combination of the following: civic action, humanitarian assistance, civil affairs, and other military activities to develop positive relationships with other countries; confidence building and other measures to reduce military tensions; military presence; activities to convey messages to adversaries; military deceptions and psychological operations; quarantines, blockades, and harassment operations; raids; intervention operations; armed conflict involving air, land, maritime, and strategic warfare operations; support for law enforcement authorities to counter international criminal activities (terrorism, narcotics trafficking, slavery, and piracy); support for law enforcement authorities to suppress domestic rebellion; and support for insurgency, counterinsurgency, and civil war in foreign countries.

Theater of operations means an area defined by the combatant commander for the conduct or support of specific operations.

(b) *General.* (1) This clause applies when contractor personnel are employed outside the United States—

(i) In a theater of operations during—

(A) Contingency operations;

(B) Humanitarian or peacekeeping operations;

(C) Other military operations; or

(D) Military exercises designated by the combatant commander; or

(ii) At a diplomatic or consular mission, when specified by the chief of mission.

(2) Contract performance may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are not authorized to use deadly force against enemy armed forces other than in self defense.

(ii) Private security Contractor personnel are authorized to use deadly force only when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract.

(iii) Civilians lose their law of war protection from direct attack if and for such time as they take a direct part in hostilities.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel in the area of performance in the theater of operations or at the diplomatic or consular mission are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander relating to mission accomplishments, force protection, security, health, safety, or relations and interaction with local nationals.

(e) *Preliminary personnel requirements.* (1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vi) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the theater of operations or at the diplomatic or consular mission, the Contractor shall ensure the following:

(i) All applicable specified security and background checks are completed.

(ii) All personnel are medically and physically fit and have received all required vaccinations.

(iii) All personnel have all necessary passports, visas, entry permits, and other documents required for contractor personnel to enter and exit the foreign country, including those required for in-transit countries.

(iv) All personnel have received—

(A) A country clearance or special area clearance, if required by the chief of mission; and

(B) A theater clearance, if required by the Combatant Commander.

(v) All personnel have received personal security training. The training must at a minimum—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract.

(vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at *http://www.travel.state.gov*.

(3) The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that—

(i) If this contract is with the Department of Defense, or the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 *et seq.*);

(ii) Pursuant to the War Crimes Act, 18 U.S.C. 2441, Federal criminal jurisdiction also extends to conduct that is determined to constitute a violation of the law of war when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States (18 U.S.C. 7(9)).

(f) *Processing and departure points.* The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the theater of operations or at the diplomatic or consular mission to—

(1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;

(2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and

(3) Process through a reception center designated by the Contracting Officer upon arrival at the place of performance.

(g) *Personnel data list.* (1) The Contractor shall establish and maintain with the designated Government official a current list of all contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.

(2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.* (1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The [*specify individual, e.g. Contracting Officer Representative, Regional Security Officer*, etc,] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.* (1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.* (1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.* (1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other U.S. Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee—

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2)(i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with 10 U.S.C. 1486, the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

(1) In a theater of operations during—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations;

(iii) Other military operations; or

(iv) Military exercises designated by the Combatant Commander; or

(2) At a diplomatic or consular mission, when specified by the chief of mission.

(End of clause)

[FR Doc. 06–6278 Filed 7–17–06; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register

Vol. 71, No. 137

Tuesday, July 18, 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

July 12, 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 tominimize 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.

Rural Utilities Service

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. 7 CFR part 1786, subparts E and F are authorized by this section.

Need and Use of the Information: The information will be collected from borrowers requesting to prepay their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of subpart G is to refinance.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Rural Utilities Service

Title: 7 CFR 1717 Subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et. seq.) (RE Act). Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this collection of information. The information collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed.

Need and Use of the Information: RUS will collect information to determine the need for debt settlement; the amount of debt the borrower can repay; the future scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–11304 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 12, 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) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Animal ID System; Information Requirements for Animal ID Number TagManufacturers, Managers, and Resellers.

OMB Control Number: 0579–0283.

Summary of Collection: The U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. NAIS is a cooperative State-Federal-industry partnership to standardize and expand animal identification programs and practices to all livestock species and poultry. The first priority of NAIS is to identify locations that hold and manage livestock with the nationally unique, 7-character Premises Identification Number (PIN). States and Tribes administer premises registration. Once producers have registered their premises, they may obtain official identification devices that are encoded or imprinted with an animal identification number (AIN). As producers acquire AIN devices, a NAIS record will be created, linking the devices to the receiving premises. USDA is implementing the AIN Management System—a Web-based system that administers AINs. Animal health officials will have critical information needed during a disease traceback to determine the origin of an animal or where it was first tagged.

Need and Use of the Information: In order to develop and implement an effective national animal identification system, USDA needs to be able to identify animals using compatible, uniform technology and information standards. The AIN Management System, AIN Tag Manufacturer agreements, and having approved AIN Tags, Managers and Resellers will ensure that the animal identification information is gathered, collected, and maintained in an effective, uniform system. Without this animal identification component, an effective NAIS would be impossible, and without the national system, animal disease outbreaks will be more difficult to trace and contain.

Description of Respondents: State, local or tribal government; business or other for-profit.

Number of Respondents: 2,125.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 3,053.

Animal and Plant Health Inspection Service

Title: National Animal Identification System; Information Requirements for State, Tribal, and Private Animal Tracking Database Owner.

OMB Control Number: 0579–0288.

Summary of Collection: The National Animal Identification System (NAIS) is a cooperative State-Federal-industry partnership to standardize and expand animal identification programs and practices to all livestock species and poultry. NAIS is comprised of three key components: Premises registration, animal identification and animal tracking. The long-term goal of the NAIS is to provide animal health officials with the capability to identify all livestock and premises that have had direct contact with a disease of concern within 48 hours after discovery. NAIS is currently a voluntary program.

Need and Use of the Information: In order to develop and implement an effective national animal identification system, USDA needs to be able to access animal tracking information in cases of animal health events. The animal-tracking component will help USDA conduct efficient and effective trace backs and trace forwards. Without this animal-tracking component, an effective NAIS would be impossible, and without this national system, animal disease outbreaks (whether naturally occurring or the result of an act of terrorism) will be more difficult to trace and contain. The longer the trace-back takes, the greater the spread of the disease that in turns increases the economic losses. Organizations that wish to participate in the animal tracking phase must complete the ''Request for Evaluation of Interim Private/State Animal Tracking Database'' to initiate an APHIS review of its animal tracking database.

Description of Respondents: State, local or tribal government; business or other for-profit.

Number of Respondents: 30.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 210.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–11305 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Objections to New Land Management Plans, Plan Amendments, and Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Objections to New Land Management Plans, Plan Amendments, and Plan Revisions.

DATES: Comments must be received in writing on or before September 18, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Assistant Director for Planning, Ecosystem Management Coordination, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104.

Comments also may be submitted via facsimile to (202) 205–1012 or by e-mail to: *aerba@fs.fed.us*.

The public may inspect comments received at the Ecosystem Management Coordination Office, 201 14th St., SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205–0895 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Anthony Erba, Ecosystem Management Coordination, at (202) 205–0895 or e-mail to: *aerba@fs.fed.us*. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Objection to New Land Management Plans, Plan Amendments, and Plan Revisions.

OMB Number: 0596–0158.

Expiration Date of Approval: December 31, 2006.

Type of Request: Extension of a currently approved collection.

Abstract: The information that would be required by 36 CFR 219.13 is the minimum information needed for a citizen or organization to explain the nature of the objection being made to a proposed land management plan, plan amendment, or plan revision and the reason why the individual or organization objects. Specifically, an objector must provide name, mailing address, and telephone number; and identification of the specific proposed plan, amendment or revision that is the subject of the objection; and a concise statement explaining how the environmental disclosure documents, if any, and proposed plan, amendment, or revision are inconsistent with law, regulation, Executive Order, or policy and any recommendations for change. The Reviewing Officer must review the objection(s) and relevant information and then respond to the objector(s) in writing.

Estimate of Annual Burden: 10 hours to prepare the objection.

Type of Respondents: Interested and affected individuals, organizations, and governmental units who participate in the planning process: such as persons who live in or near National Forest System (NFS) lands; local, State, and Tribal governments who have an interest in the plan; Federal agencies with an interest in the management of NFS lands and resources; not-for-profit organizations interested in NFS management, such as environmental groups, recreation groups, educational institutions; and commercial users of NFS land and resources.

Estimated Annual Number of Respondents: 1,210 a year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,100 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) 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) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 13, 2006.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E6–11321 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The notice seeking comments concerning the information collection for land exchanges published in the **Federal Register**/Vol. 71, No. 116/ Friday, June 16, 2006; Page 34879 provided an incorrect e-mail address.

The correct e-mail address to submit comments on information collection for land exchanges is: *land exchange@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Kathleen L. Dolge, Lands Staff,Forest Service, USDA, Yates Building, 201 14th Street, SW., Washington, DC 20250–1124, Telephone (202) 205–1248.

Dated: July 7, 2006.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–11299 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on July 26, 2006, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held on Wednesday, July 26, 2006 at 10 a.m.

ADDRESSES: The meeting will be held at the Sierraville Ranger Station, Sierraville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) Status of previously approved projects; and (3) Review of and decisions on new projects proposals for current year. It is open to the public and the public will have an opportunity to comment at the meeting.

Dated: July 10, 2006.

Jean M. Masquelier,

Acting Forest Supervisor.

[FR Doc. 06–6263 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Red Bayou Watershed Project; Caddo Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Red Bayou Watershed Project, Caddo Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is agricultural irrigation water management. The proposed plan consists of a pump station and pipeline that will allow transfer of water from the Red River to Red Bayou thus providing a dependable source of irrigation water to farmers in the project area. Associated land treatment measures will increase the efficiency of existing irrigation systems, reduce erosion and sedimentation rates, improve water quality and provide incidental opportunities to improve wildlife and fisheries habitat.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Donald W. Gohmert,

State Conservationist.

[FR Doc. E6–11350 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene on Wednesday, August 30, 2006, through Thursday, August 31, 2006. Public comment periods will be held each day. Individuals making oral presentations should register in person at the meeting site and must bring with them 50 copies of any materials they would like distributed. Written materials for the AAQTF's consideration prior to the meeting must be received by Dr. Diane Gelburd no later than Friday, August 4, 2006.

ADDRESSES: The meeting will be held at the Harrisburg Hilton Hotel, One North Second Street, Harrisburg, Pennsylvania 17101; telephone: (717) 233–6000.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Dr. Diane Gelburd, Designated Federal Officer. Dr. Gelburd may be contacted at USDA Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6158–S, Washington, DC 20250; telephone: (202) 720–2587; e-mail: *Diane.Gelburd@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning the AAQTF may be found on the Internet at *http://www.airquality.nrcs.usda.gov/AAQTF/.*

Draft Agenda of the August 30–31 2006, Meeting of the AAQTF

A. Welcome to Harrisburg, Pennsylvania.
B. Discussion of Minutes from Previous Meeting.
C. Discussion of Documents to be Approved by the End of the Meeting.
D. Scientific and Subcommittee Presentations.
   1. Emerging Issues Subcommittee Report.
   2. Research Subcommittee Report.
   3. Policy Subcommittee Report.
   4. Education and Outreach Subcommittee Report.
E. U.S. Department of Agriculture Update.
F. Environmental Protection Agency Update.
G. Next Meeting, Time and Place.
H. Public Comments.

(Time will be reserved during each daily session to receive public comments. Individual presentations will be limited to 5 minutes.)

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written materials at the meeting itself in conjunction with spoken comments must bring 50 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be received by Dr. Gelburd no later than Friday, August 4, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Dr. Gelburd. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on July 11, 2006.

Bruce I. Knight,

Chief.

[FR Doc. E6–11360 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: ''Stream Habitat Improvement and Management (Code 395),'' ''Fish Passage (Code 396),'' and ''Fishpond Management (Code 399).'' NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides (eFOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: *Effective Dates:* Comments will be received for a 30-day period commencing with this date of publication. After consideration of all comments, final versions of these new or revised conservation practice standards will be adopted after the close

of the 30-day period. Comments should be submitted to Daniel Meyer, National Agricultural Engineer, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890, or via e-mail: *Daniel.Meyer@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of these standards are also available from NRCS in Washington, DC. Submit individual inquiries, in writing, to Daniel Meyer, National Agricultural Engineer, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890, or via e-mail: *Daniel.Meyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments and a final determination of changes will be made.

Signed in Washington, DC, on July 11, 2006.

Bruce I. Knight,

Chief.

[FR Doc. E6–11351 Filed 7–17–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 060710189–6189–01]

Solicitation of Applications for the Research and Evaluation Program

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) is soliciting applications for FY 2006 Research and Evaluation Program funding. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through its Research and Evaluation Program, EDA works towards fulfilling its mission by funding research and technical assistance projects to promote competitiveness and innovation in urban and rural regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help States, local governments, and community-based organizations to achieve their highest economic potential.

DATES: Applications (on Form ED–900A, Application for Investment Assistance) for funding under this notice must be received by the EDA representative listed below under **ADDRESSES** no later than August 15, 2006 at 5 p.m. EDT. Applications received after 5 p.m. EDT on August 15, 2006 will not be considered for funding. By September 15, 2006, EDA expects to notify the applicants selected for investment assistance. The selected applicants should expect to receive funding for their projects within thirty (30) days of EDA's notification of selection.

ADDRESSES: Applications submitted pursuant to this notice may be:

1. E-mailed to William P. Kittredge at *wkittredge@eda.doc.gov*; or

2. Hand-delivered to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; or

3. Mailed to William P. Kittredge, Senior Program Analyst, Economic Development Administration, Room 7009, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are encouraged to submit applications by e-mail. Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. EDA will not accept applications submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact William P. Kittredge at (202) 482–5442 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION:

Electronic Access: The Federal Funding Opportunity (FFO) announcement for this competitive solicitation is available at *www.grants.gov* and at EDA's Internet Web site at *http://www.eda.gov.* Paper copies of the Form ED–900A, ''Application for Investment Assistance'' (OMB Control No. 0610–0094), and additional information on EDA and its Research and Evaluation Program may be obtained from EDA's Internet Web site at *http://www.eda.gov.*

Funding Availability: Funds appropriated under the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 (Pub. L. 109–108, 119 Stat. 2290 (2005)) are available for making awards under the Research and Evaluation Program authorized by section 207 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147), as amended (PWEDA), and 13 CFR part 306, subpart A. Funds up to $200,000 are available, and shall remain available until expended, for funding awards pursuant to this competitive solicitation. This is the second FFO announcement published under this program during FY 2006. The first announcement under National Technical Assistance was published on June 16, 2006. EDA anticipates publishing at least one more FFO announcement under this program later this fiscal year.

Statutory Authority: The authority for the Research and Evaluation Program is section 207 of PWEDA (42 U.S.C. 3147). You may access EDA's currently effective regulations (codified at 13 CFR Chapter III) and PWEDA on EDA's Internet Web site at *http://www.eda.gov.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.312, Economic Development—Research and Evaluation.

Eligibility Requirement: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; a public or private non-profit organization or association; a private individual; or a for-profit organization. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). Under this competitive solicitation, the Assistant Secretary of Commerce for Economic Development (Assistant Secretary) has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent where the

project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

While cash contributions are preferred, in-kind contributions, consisting of assumptions of debt or contributions of space, equipment, and services, may provide the non-Federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. Funds from other Federal financial assistance awards are considered matching share funds only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project, available as needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications under the Research and Evaluation Program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: To apply for an award under this announcement, an eligible applicant must submit a completed application (Form ED–900A, Application for Investment Assistance) to EDA during the timeframe specified in the **DATES** section of this notice. Applications received after 5 p.m. EDT on August 15, 2006 will not be considered for funding. By September 15, 2006, EDA expects to notify the applicants selected for investment assistance. Unsuccessful applicants will be notified by postal mail that their applications were not recommended for funding. Applications that do not meet all items required or that exceed the page limitations set forth in this competitive solicitation will be considered non-responsive and will not be considered by the review panel. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three (3) EDA staff members, all of whom will be full-time federal employees.

Evaluation Criteria: The review panel will evaluate the applications and rate and rank them using the following criteria of approximate equal weight:

1. Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:

a. Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;

b. Benefits distressed regions; and

c. Demonstrates innovative approaches to stimulate economic development in distressed regions;

2. The degree to which an EDA investment will have strong organizational leadership, relevant project management experience and a significant commitment of human resources talent to ensure the project's successful execution (*see* 13 CFR 301.8(b));

3. The ability of the applicant to implement the proposed project successfully (*see* 13 CFR 301.8);

4. The feasibility of the budget presented; and

5. The cost to the Federal government.

Selection Factors: EDA expects to fund the highest ranking applications submitted under this competitive solicitation. The Assistant Secretary is the Selecting Official and will normally follow the recommendation of the review panel. However, the Assistant Secretary may not make any selection, or he may select an application out of rank order for the following reasons: (1) A determination that the application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation. This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet Web site: *http://gpoaccess.gov/fr/retrieve.html.*

Paperwork Reduction Act

This request for applications contains a collection of information subject to the requirements of the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved the use of the Application for Investment Assistance (Form ED–900A) under control number 0610–0094. The Form ED–900A also incorporates Forms SF–424 (Application for Financial Assistance), SF–424A (Budget—Non-Construction Programs) and SF–424B (Assurances—Non-Construction Programs). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866, ''Regulatory Planning and Review.''

Executive Order 13132

It has been determined that this notice does not contain ''policies that have Federalism implications,'' as that phrase is defined in Executive Order 13132, ''Federalism.''

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 12, 2006.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.

[FR Doc. E6–11331 Filed 7–17–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Diaa Mohsen; In the Matter of: Diaa Mohsen, 927 Pavonia Avenue, Apartment 2, Jersey City, NJ 07306; Order Denying Export Privileges

A. Denial of Export Privileges of Diaa Mohsen

On February 15, 2002, in the U.S. District Court in the Southern District of Florida, following a plea of guilty, Diaa Mohsen (''Mohsen'') was convicted of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Mohsen pled guilty of

knowingly and willfully attempting to export from the United States to Pakistan stinger missiles and night vision goggles, items designated as defense articles without obtaining the required approval from the U.S. Department of State. Mohsen was sentenced to 30 months imprisonment followed by three years of supervised release. He was released from prison on September 13, 2003 and will be released from U.S. Probation Office supervision on September 12, 2006.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401–2420 (2000)) (''Act'') [1] and Section 766.25 of the Export Administration Regulations [2] (''Regulations'') provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * AECA,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Mohsen's indictment for violating the AECA, and have provided notice and an opportunity for Mohsen to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of Regulations. Mohsen made a telephone call to the Office of Chief Counsel for Industry and Security and was instructed to make a written submission as provided by the Regulations. Having received no submission from Mohsen, I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny Mohsen's export privileges under the Regulations for a period of 10 years from the date of Mohsen's conviction.

Accordingly, it is hereby *Ordered:*

I. Until February 25, 2012, Diaa Mohsen, 927 Pavonia Avenue, Apartment 2, Jersey City, NJ 07306, and when acting for or on behalf of Mohsen, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly, or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Diaa Mohsen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until February 15, 2012.

VI. In accordance with part 756 of the Regulations, Mohsen may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Mohsen. This Order shall be published in the **Federal Register**.

Dated: July 11, 2006.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 06–6273 Filed 7–17–06; 8:45 am]

BILLING CODE 3510–DT–M

[1] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR parts 730–774 (2006).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Final Results of 2004–2005 Semi–Annual New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 4, 2006, the Department of Commerce (''the Department'') published the preliminary results of new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''). *See Fresh Garlic from the People's Republic of China: Preliminary Results of 2004–2005 Semi–Annual New Shipper Reviews*, 71 FR 26322 (May 4, 2006) (''*Preliminary Results*''). The

merchandise covered by this order is fresh garlic as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is November 1, 2004, through April 30, 2005. We invited parties to comment on our *Preliminary Results*. We received no comments, and no new evidence was placed on the record to cause us to question that determination. Therefore, the final results are unchanged from those presented in the *Preliminary Results*. The final dumping margins for these reviews are listed in the ''Final Results of the Reviews'' section below.

EFFECTIVE DATE: July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Ryan Douglas or Katharine Huang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1277 and (202) 482–1271, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2006, the Department published the preliminary results of the 2004–2005 semi–annual new shipper reviews of fresh garlic from the PRC. *See Preliminary Results*. These new shipper reviews cover four respondents,[1] and the period November 1, 2004, through April 30, 2005. In the *Preliminary Results*, we invited parties to comment. We received no comments.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (''CBP'') to that effect.

Separate Rates

In our *Preliminary Results*, we preliminarily found that Chengshun, Fanhui, Dongbao, and Anqiu Friend had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 71 FR at 26325. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

Final Results of the Reviews

The Department has determined that the following final dumping margins exist for the period November 1, 2004, through April 30, 2005:

Exporter	Producer	Margin (percent)
Shandong Chengshun Farm Produce Trading Company, Ltd.	Jinxiang Chengsen Agricultural Trade Company, Ltd.	0.00
Shenzhen Fanhui Import and Export Co., Ltd.	Shenzhen Fanhui Import and Export Co., Ltd.	0.00
Qufu Dongbao Import and Export Trade Co., Ltd.	Qufu Dongbao Import and Export Trade Co., Ltd.	0.00
Anqiu Friend Food Co., Ltd.	Anqiu Friend Food Co., Ltd.	0.00

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer- (or customer-) specific assessment rate is zero.

Bonding will no longer be permitted to fulfill security requirements for shipments of fresh garlic from the PRC produced by CATC and exported by Chengshun, produced and exported by Fanhui, produced and exported by Dongbao, and produced and exported by Anqiu Friend that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Chengshun, Fanhui, Dongbao, and Anqiu Friend entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced by CATC and exported by Chengshun; produced and exported by Fanhui; produced and exported by Dongbao; or produced and exported by Anqiu Friend, the cash deposit rate will be zero; (2) for subject merchandise exported by Chengshun but not produced by CATC, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 376.67 percent); (3) for subject merchandise exported by Fanhui, Dongbao, or Anqiu Friend, but produced by any party other than itself, the cash deposit rate will be the PRC–wide rate (*i.e.*, 376.67 percent); (4) for subject merchandise produced by Fanhui, Dongbao, or Anqiu Friend, but exported by any party other than itself, the cash deposit rate will be the PRC–wide rate (*i.e.*, 376.67 percent); and (5) for subject merchandise produced by CATC but exported by any party other than Chengshun, the cash deposit rate

[1] The four respondents are Shandong Chengshun Farm Produce Trading Company, Ltd. (''Chengshun''), Shenzhen Fanhui Import and Export Co., Ltd. (''Fanhui''), Qufu Dongbao Import and Export Trade Co., Ltd. (''Dongbao''), and Anqiu Friend Food Co., Ltd. (''Anqiu Friend''). These new shipper reviews cover shipments of fresh garlic from the PRC that were produced by Jinxiang Chengsen Agricultural Trade Company, Ltd. (''CATC'') and exported by Chengshun, produced and exported by Fanhui, produced and exported by Dongbao, and produced and exported by Anqiu Friend.

will be the PRC–wide rate (*i.e.*, 376.67 percent).

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, 19 CFR 351.214(i)(1), and 19 CFR 351.221(b)(5).

Dated: July 11, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–11290 Filed 7–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot–Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 12, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products (HRS) from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (*Preliminary Results*). This review covers one producer/exporter of HRS, Essar Steel Ltd. (Essar). The period of review (POR) is December 1, 2003, through November 30, 2004. Based on our analysis of the comments received, we made changes to the preliminary dumping margin calculation. Despite these changes, the calculated dumping margin for these final results does not differ from the dumping margin determined in the *Preliminary Results*. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–2769 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2006, the Department published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results. In response to the Department's invitation to comment on the *Preliminary Results* of this review, Essar and Nucor Corporation (Nucor), one of two petitioners, filed case briefs on February 22, 2006. Essar, Nucor and United States Steel Corporation (USSC), the other petitioner, filed rebuttal briefs on February 27, 2006. At the Department's request, Nucor excluded certain factual information from its brief and rebuttal brief and resubmitted its briefs on March 17, 2006. On March 3, 2006, Essar withdrew its February 10, 2006, request for a hearing.

Scope of the Order

The products covered by the antidumping duty order are certain hot–rolled carbon steel flat 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 4.0 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 the order.

Specifically included within the scope of the 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 to be included in the scope of the 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 the order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the order:

- Alloy HRS products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing 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 the order is classified 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 carbon steel flat products covered by the 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 written description of the merchandise under review is dispositive.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated concurrently herewith (the Decision Memorandum), which is adopted herein, by reference. Attached, as an appendix to this notice, is a list of the comments the Department received from interested parties, all of which are discussed in the Decision Memorandum. The Decision Memorandum is on file in the Central Record Unit, Room B–099 of the Herbert C. Hoover Building, and may be accessed on the Web at http://ia.ita.doc.gov/frn/index.html.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following changes in the comparison and margin calculation programs. For a full discussion of these changes, *see* the Decision Memorandum.

1. We corrected our ministerial error related to the addition to costs of credits granted under the Duty Entitlement Passbook Scheme.
2. We corrected ministerial errors related to increases of general and administrative (G&A) and interest expenses that were added in addition to increases of material costs by the Department under the major input rule.

Final Results of Review

As a result of this review, we determine that the following weighted–average dumping margin exists for the period December 1, 2003, through November 30, 2004:

Manufacturer/Exporter	Margin (percent)
Essar Steel Limited	0.00 (de minimis)

Assessment

The Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR § 351.212(b). The Department calculated an importer–specific duty assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. Where the importer–specific assessment rate is above *de minimis*, the Department will instruct CBP to assess the importer–specific rate uniformly on the entered value of all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposits

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). In the instant matter: (1) since the dumping margin for Essar is *de minimis* (less than 0.50 percent), no cash deposit will be required for Essar; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 23.87 percent, which is the ''all others'' rate established in the LTFV investigation (38.72 percent), adjusted for the export subsidy rate in the companion countervailing duty investigation. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. *See* section 751(a)(2)(C) of the Act.

Notification to Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption

that reimbursement of the antidumping duties occurred and the concomitant assessment of double antidumping duties. This notice is also the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

The Department is publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 11, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Issues Discussed in the Issues and Decision Memorandum

Comment 1: Determining the Market Price of Electricity in Applying the Major Input Rule
Comment 2: Whether to Adjust U.S. Prices for Duties Imposed to Offset Export Subsidies
Comment 3: Whether to Recalculate Interest and General and Administrative Expenses After Applying the Major Input Rule
Comment 4: Adding Import Duties to Reported Costs

[FR Doc. E6–11292 Filed 7–17–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Brianne Riker, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 and (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from the Republic of Korea on July 27, 1999. *See Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan and South Korea*, 64 FR 40555 (July 27, 1999). On August 29, 2005, the Department published a notice of initiation of an administrative review of the order on SSSSC from Korea for the period July 1, 2004, through June 30, 2005. *See* 70 FR 51009. The respondents in this administrative review are: Boorim Corporation, Dae Kyung Corporation, DaiYang Metal Co., Ltd., Dine Trading Co., Ltd., and Dosko Co., Ltd. On April 10, 2005, the Department published in the **Federal Register** its preliminary results. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074 (Apr. 10, 2006). The final results are currently due no later than August 8, 2006.

Extension of the Time Limit for Final Results of Administrative Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame because analysis of the issues presented in the case briefs, including the issue related to the U.S. price adjustment for countervailing duties imposed to offset export subsidies, requires additional time. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is fully extending the time limit for completion of the final results to 300 days. Therefore, the final results are due no later than February 5, 2007, the next business day after 300 days from publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: July 11, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11370 Filed 7–17–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods From India: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 19, 2006, the Department of Commerce (The Department) published a notice of its intent to rescind the administrative review of the antidumping duty order on stainless steel wire rods from India for Viraj Alloys, Ltd., Viraj Forgings, Ltd., Viraj Impoexpo, Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd. (collective, the Viraj entities), and Mukand Limited (Mukand) due to the lack of suspended entries of merchandise subject to the order during the period December 1, 2004, through November 30, 2005. See *Stainless Steel Wire Rods from India: Notice of Intent of Rescind Antidumping Duty Administrative Review,* 71 FR 29124 (May 19, 2006). The Department received comments from Mukand and rebuttal comments from the petitioner, Carpenter Technology Corporation, regarding Mukand but did not receive any comments from any parties regarding the Viraj entities. We are now rescinding the administrative review with respect to the Viraj entities and Mukand.

DATES: *Effective Date:* July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Kristin Case or John Holman, AD/CVD Operations Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3174 or (202) 482–3683, respectively.

SUPPLEMENTARY INFORMATION:

Background

After initiating an administrative review of the Viraj entities and Mukand

(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 determined that there were no suspended entries of merchandise subject to the order involving any of the Viraj entities or Mukand for the period of review (POR). Therefore, it published a notice of intent to rescind the administrative review and requested comments with respect to its intent to rescind the administrative review of wire rods from India. See *Stainless Steel Wire Rods from India: Notice of Intent to Rescind Antidumping Duty Administrative Review,* 71 FR 29124 (May 19, 2006) (*Intent to Rescind*).

On May 18, 2006, Mukand submitted a letter claiming that it had an entry of subject merchandise during the POR. The letter included a copy of U.S. Customs and Border Protection (CBP) form 7501 which indicated a November 2005 entry date. On June 5, 2006, Mukand submitted a case brief and documentation to support its claim that it had an entry during the POR. On June 16, 2006, the petitioner submitted comments rebutting Mukand's arguments. At the request of Mukand, on June 21, 2006, we held a hearing on our intent to rescind the administrative review with respect to Mukand. The Department did not receive comments concerning its intent to rescind the administrative review of the Viraj entities.

Scope of the Order

The products covered by this order are certain stainless steel wire rods, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. Wire rods are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or ore of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of wire rods sold in the United States are round in cross-section shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The products are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Analysis of Comments Received

All issues concerning the *Intent to Rescind* raised in the case and rebuttal briefs by parties to the administrative review of the order on stainless steel wire rods from India are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated July 12, 2006, which is hereby adopted by this notice. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Commerce building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memo are identical in content.

Rescission of Administrative Review

Section 751(a) of the Act provides that, when conducting administrative reviews, the Department shall determine the dumping margin for entries during the POR. Further, according to 19 CFR 351.213(d)(3), the Department may rescind an administrative review in whole or only with respect to a particular exporter or producer if it concludes that, during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. The Department has consistently interpreted the statutory and regulatory language as requiring ''that there be entries during the period of review upon which to assess antidumping duties.'' See *Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088, 44088 (August 1, 2005), and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). In *Allegheny Ludlum Corp.* v. *United States*, 346 F.3d 1368 (Fed. Cir. 2003), the Court of Appeals for the Federal Circuit upheld the Department's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR. See also *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067, 63068 (November 7, 2003) (stating that ''the Department's interpretation of its statute and regulations, as affirmed by the Court of Appeals for the Federal Circuit, supports not conducting an administrative review when the evidence on the record indicates that respondents had no entries of subject merchandise during the POR'').

Viraj Entities

Previously we determined that ''there are no suspended entries of merchandise subject to the order involving any of the Viraj entities for the POR.'' See *Intent to Rescind.* Further, we received no comments with respect to this determination. Therefore, we are rescinding the review with respect to the Viraj Entities.

Mukand

Previously we determined that ''there were no entries of merchandise subject to the order from Mukand during the POR.'' See *Intent to Rescind*.

After a review of all of the facts on the record, we have determined that Mukand's entry in question entered after the POR. We found that the entry documentation submitted by Mukand was actually pre-filed and indicated the broker's elected date of entry and not the actual date of entry. Morever, Mukand confirmed this fact when it stated in its case brief that ''wire rod then moved in bond from Los Angeles to Chicago. When it arrived in Chicago Customs, Customs indicated a December 5, 2006, release date as the arrival date in the Port of Chicago.'' See Mukand's Letter to the Secretary, dated June 5, 2006.

Thus, we are rescinding the review with respect to Mukand. For a detailed discussion of this issue, see the Decision Memo and also the ''Memorandum to the File'' from the analyst through Minoo Hatten, Program Manager, ''2004–2005 Entry of Stainless Steel Wire Rods from India by Mukand Limited,'' dated July 12, 2006.

Thus, the regulations, previous administrative decisions, and case law all support rescission of the administrative review in this case. Therefore, the Department rescinds the administrative review with respect to the Viraj entities and Mukand.

This notice is published in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.213(d).

Dated: July 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–6300 Filed 7–7–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Stainless Steel Wire Rod From Sweden: Notice of Extension of Time Limit for 2004–2005 Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On April 26, 2006, the Department partially extended the time limit for the preliminary results in this review until August 1, 2006. *See Stainless Steel Wire Rod from Sweden: Notice of Extension of Time Limit for 2004–2005 Administrative Review*, 71 FR 25813 (May 2, 2006).

Extension of Time Limits for Preliminary Results

As a result of recent meetings which took place between the interested parties and Department officials on June 19 and 22, 2006, the Department requires additional time to consider a model matching criteria issue raised by the respondent in this review and seek additional comment on the matter. Thus, it is not practicable to complete the preliminary results of this review by August 1, 2006. Therefore, the Department is fully extending the time limit for completion of the preliminary results to 365 days, in accordance with section 751(a)(3)(A) of the Act. The preliminary results are now due no later than October 2, 2006, the next business day after 365 days from the last day of the anniversary month of the order. The deadline for the final results continues to be 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 11, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11291 Filed 7–17–06; 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: July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords 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) 482–3146 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 January 1, 2006, through March 31, 2006.

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: July 12, 2006.

David M. Spooner,

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

APPENDIX—Continued
SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY[1]

Country	Program(s)	Gross[2] Subsidy ($/lb)	Net[3] Subsidy ($/lb)
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
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
Spain	EU Restitution Payments	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00
U.K.	EU Restitution Payments	$ 0.00	$ 0.00

[1] This chart includes only those countries which exported articles of cheese to the United States during 1st Quarter, 2006, Luxembourg, Poland and Slovenia did not export articles of cheese to the United States during the 1st Quarter, 2006.
[2] Defined in 19 U.S.C. 1677(5).
[3] Defined in 19 U.S.C. 1677(6).

[FR Doc. E6–11369 Filed 7–17–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Notice of Rescission of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 28, 2006, the Department of Commerce (''the Department'') published a notice of intent to rescind the administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products from India. The review covers Essar Steel, Ltd. (''Essar''). The period of review (''POR'') is January 1, 2005, through December 31, 2005. The Department received no comments concerning the intent to rescind; therefore, we are rescinding the administrative review. We have found that, during the POR, Essar made no shipments of subject merchandise to the United States during the POR.

EFFECTIVE DATE: July 18, 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 Ave., NW, Washington, DC 20230; telephone: (202) 482–0395.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2006, the Department published a notice of intent to rescind the administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products from India. *See Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 71 FR 15379 (March 28, 2006)(''*Intent to Rescind*''). On April 20, 2006, the Department published a correction to the notice of intent to rescind. *See Notice of Correction to Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 71 FR 20390 (April 20, 2006). We invited interested parties to comment on the *Intent to Rescind*. We received no comments.

Scope of Review

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.

Rescission of Administrative Review

On February 16, 2006, Essar asserted that it had made no shipments of subject merchandise during the POR and requested that the Department rescind the review. 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* the March 15, 2006, Memorandum to the File from the Team regarding Customs Query, the public version of which is on file in the Central Records Unit (''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 determine to rescind this review.

Cash Deposit Requirements

We will instruct CBP to continue to collect cash deposits for Essar at the rate set forth in the most recently completed administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 11, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–11371 Filed 7–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071306E]

Endangered Species; File No. 1570

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Southeast Fisheries Science Center (SEFSC), NMFS, 75 Virginia Beach Drive, Miami, Florida 33149, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), hawsbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 17, 2006.

ADDRESSES: The application 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

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room

13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1570.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of 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 222–226).

The proposed research would evaluate modifications to commercial fishing gear to mitigate sea turtle interactions and capture. These evaluations and subsequent gear modifications would help to reduce incidental turtle bycatch in the gear types studied. By assessing those animals incidentally captured, the research would also provide new data to improve stock assessments, assess the impact of anthropogenic activities, better manage and, ultimately, recover these species. The research would take up to 253 loggerhead, 101 Kemp's ridley, 112 leatherback, 51 green, 37 hawksbill, 36 olive ridley sea turtles, and 88 unidentified hardshell species (e.g., a turtle that escaped from the gear before identification could be made). Animals would be handled, measured, weighed, photographed, flipper tagged, passive integrated transponder tagged, skin biopsied, and released. A subset of these animals would be captured by trawl research authorized by the permit. The research would take place in waters of the Atlantic Ocean, Gulf of Mexico, Caribbean Sea and their tributaries. The permit would be issued for 5 years.

Dated: July 13, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–11368 Filed 7–17–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act

July 12, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Directive to the Commissioner of Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Madagascar shall be treated as ''handloomed, handmade, folklore articles, or ethnic printed fabrics'' and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Madagascar with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: July 17, 2006.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (''AGOA Acceleration Act'') (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 dated January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 dated June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of products eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 and Presidential Proclamation 7912, the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as handloomed, handmade, folklore articles, or ethnic printed fabrics. **See Executive Order 13191, 66 FR 7271, 7272 (January 22, 2001); Presidential Proclamation 7912, 70 FR 37959, 37961 & 63** (June 30, 2005).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for handmade, hand-loomed, folklore articles, or ethnic printed fabrics.

CITA has consulted with Malagasy authorities and has determined that handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, place mats, and tablecloths), and handmade articles made from handloomed fabrics, if produced in and exported from Madagascar, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Malagasy authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping ''9''.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 2006.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (''CITA''), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (''AGOA Acceleration Act'') (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 dated January 17, 2001, and Presidential Proclamation 7912 dated June 29, 2005, has determined, effective on July 17, 2006, that the following articles shall be treated as articles eligible under Category 9 of the AGOA: handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and handmade articles made from handloomed fabrics, if made in Madagascar from fabric

handloomed in Madagascar. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping ''9'', in accordance with the provisions of the Visa Arrangement between the Government of Madagascar and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Malagasy authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 06–6299 Filed 7–13–06; 3:17 pm]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0105]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 17, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

DPR 31

SYSTEM NAME:

Personal Commercial Solicitation Evaluation (June 19, 2006, 71 FR 35259).

CHANGES:

* * * * *

NOTIFICATION PROCEDURE:

In the first paragraph, delete ''1745 Jefferson Davis Highway'' and replace with ''241 S. 18th Street''.

In the second paragraph, change the word ''much'' to ''such.''

RECORD ACCESS PROCEDURES:

In the first paragraph, delete ''1745 Jefferson Davis Highway'' and replace with ''241 S. 18th Street''.

* * * * *

DPR 31

SYSTEM NAME:

Personal Commercial Solicitation Evaluation.

SYSTEM LOCATION:

Department of Defense, Military Community and Family Policy, ATTN: Morale, Welfare and Recreation Policy Office, 241 S. 18th Street, Suite 302, Arlington, VA 22202–3424.

Records are also located at installations and activities where the commercial solicitation occurred.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty service members and solicitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of sales representative and company; appointment information; conduct of sale representative; active duty service member's name, home and work phone number, unit address and email.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 15 U.S.C. 1601, Congressional findings and declaration of purpose; and DoD Directive 1344.7, Personnel Commercial Solicitation on DoD Installations.

PURPOSE(S):

The information is used to document the active duty service member's experience with the sales representatives. Service member responses ensure sales representatives conduct themselves fairly and in accordance with DoD Directive 1344.7. Information may be used as part of a case file in the event proceedings are considered necessary to deny or withdraw permission for the sales representative and/or the company to solicit on one or more military installations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices do not apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders.

RETRIEVABILITY:

Records are retrieved by the active duty service members' name and unit.

SAFEGUARDS:

Records are maintained in controlled areas accessible only to authorized personnel with a valid requirement and authorization to enter. Physical entry is restricted by use of combination numbered and cipher locks.

RETENTION AND DISPOSAL:

Permanent. Cut off and retire to the Washington National Records Center when superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Defense, Military Community and Family Policy, ATTN: Morale, Welfare and Recreation Policy Office, 241 S. 18th Street, Suite 302, Arlington, VA 22202–3424.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Under Secretary of Defense (Military Community and Family Policy), ATTN: Morale, Welfare and Recreation Policy Directorate, 241 S. 18th Street, Suite 302, Arlington, VA 22202–3424.

Individuals also can seek such information from the office responsible for commercial solicitation activities for the installation or activity where the commercial solicitation occurred.

Requests should include the individual's name, phone number, and address.

RECORD ACCESS PROCEDURES:

Individual seeking access to information about themselves should address written requests to the Office of the Under Secretary of Defense (Military Community and Family Policy), ATTN: Morale, Welfare and Recreation Policy Directorate, 241 S. 18th Street, Suite 302, Arlington, VA 22202–3424.

Individuals also can obtain such information from the office responsible for commerical solicitation activities for the installation or activity where the commercial solicitation occurred.

Requests should include the individual's name, phone number, and address.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Active duty service member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6270 Filed 7–17–06; 8:45 am]
BILLING CODE 1005–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DoD–2006–OS–0098]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0010

SYSTEM NAME:

Requests for Information (February 22, 1993, 58 FR 10613).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with: ''Requests for Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Information''.

SYSTEM LOCATION:

Delete entry and replace with: ''Defense Intelligence Agency, Washington, DC 20340–5100.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552, Freedom of Information Act—FOIA; 5 U.S.C. 552a, Privacy Act; DoD 5400.7–R, DoD FOIA Program; DoD 5400.11–R, DoD Privacy Program; and DIA Instruction 5400.11R, Privacy Act Instruction.''

PURPOSE(S):

Delete first paragraph and replace with: ''To provide records and documentation in response to requests from the public sector for information which is originated by or contained in the files of the Defense Intelligence Agency.''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper records in file folders and electronically in a database.''

RETRIEVABILITY:

Delete entry and replace with: ''Alphabetically by surname of individual and case numbers.''

SAFEGUARDS:

Delete entry and replace with: ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Public Access Branch, Defense Intelligence Agency, Washington, DC 20340–5100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and, if the request is made under the Privacy Act, Social Security Number. Providing the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights, but could result in delay of a timely response.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and, if the request is made under the Privacy Act, Social Security Number. Providing the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights, but could result in delay of a timely response.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''

* * * * *

LDIA 0010

SYSTEM NAME:

Requests for Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Information.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make requests to DIA for information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from requester, and documents related to the receipt, processing and final disposition of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552, Freedom of Information ACT–FOIA; 5 U.S.C. 552a, Privacy Act; DoD 5400.7–R, DoD FOIA Program; DoD 5400.11–R, DoD Privacy Program; and DIA Instruction 5400.11R, Privacy Act Instruction.

PURPOSE(S):

To provide records and documentation in response to requests from the public sector for information which is originated by or contained in the files of the Defense Intelligence Agency.

To provide information for compiling reports required by public disclosure statutes and to assist the Department of Justice in preparation of the Agency's defense in any lawsuit arising under these statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routines Uses' set forth at the beginning of the DIA's complication of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronically in a database.

RETRIEVABILITY:

Alphabetically by surname of individual and case numbers.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Granted access: Destroy 2 years after date of Agency reply. Denied access, but no appeals by requester: Destroy 6 years after date of Agency reply. Contested records: Destroy 4 years after final denial by Agency, or 3 years after final Adjudication by courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Public Access Branch, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and, if the request is made under the Privacy Act, Social Security Number. Providing the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights, but could result in delay of a timely response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and, if the request is made under the Privacy Act, Social Security Number. Providing the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights, but could result in delay of a timely response.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual requesters and Agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6267 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DoD–2006–OS–0100]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Officer, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0271

SYSTEM NAME:

Investigations and Complaints (February 22, 1993, 58 FR 10613).

CHANGES

* * * * *

SYSTEM LOCATION:

Delete zip code and replace with: ''20340–5100''.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulations; Pub. L. 95–452, the Inspector General Act of 1978; DoD Instruction 5106.3, Inspector General, DoD Inspection Program; DIA Manual 40–1, Investigations, Audits and Inspections—IG Activities; and EO 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper records in file folders and electronically in a database.''

* * * * *

SAFEGUARDS:

Delete entry and replace with: ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete zip code and replace with: ''20340–5100''.

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number''.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''

* * * * *

LDIA 0271

SYSTEM NAME:

Investigations and Complaints.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian and military personnel who filed a complaint acted upon by the Inspector General, DIA, or who were the subject of an Inspector General, DIA, investigation or inquire.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the organization, planning and execution of internal/external investigations and records created as a result of investigations conducted by the Office of the Inspector General, including reports of investigations, records of action taken and supporting papers. These files include investigations of both organizational elements and individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 95–452, the Inspector General Act of 1978; DoD Instruction 5106.3, Inspector General, DoD Inspection Program; DIA Manual 40–1, Investigations, Audits and Inspections—IG Activities; and EO 9397 (SSN).

PURPOSE(S):

Information is collected to determine the facts and circumstances surrounding a complaint filed with the office of the Inspector General by a Defense Intelligence Agency employee or to determine the facts and circumstances of matters under Inspector General inquiry of investigation. Information collected by the Inspector General is for the purpose of providing the Director, DIA, with a sound basis for just and intelligence action. Records are used as a basis for recommending actions to the Command Element and other DIA elements. Depending upon the nature of the information it may be passed to appropriate elements within the DoD, the Department of State, Department of Justice, Central Intelligence Agency and to other appropriate Government agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronically in a database.

RETRIEVABILITY:

Filed by subject matter and case number.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Records are held in current files for 5 years after completion and adjudication of all actions and retired to the Washington National Records Center. Investigations will be offered to the National Archives and complaints destroyed when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General's Office, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal interviews, personal history statements, abstracts or copies of pertinent medical records, abstracts from personnel records, results of tests, physician's notes, observations from employee's behavior, related notes, papers from counselors and/or clinical directors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), (k)(5), or (k)(7), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319. For more information contact the system manager.

[FR Doc. 06–6268 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DoD–2006–OS–0099]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0140

SYSTEM NAME:

Passports and Visas (February 22, 1993, 58 FR 10613).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete ''0001'' and replace with: ''5100''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''All DIA personnel requiring passports and visas.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulations; DoD 1000.21–R, Passport Agent Services Regulation; and EO 9397 (SSN).''

* * * * *

SAFEGUARDS:

Delete: entry and replace with: ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Records maintained in computer system require special access code to retrieve information. Electronic records are maintained on a classified and password protected system.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Operations Management Branch, ATTN: DAL–2B, Defense Intelligence Agency, Washington, DC 20340–5100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and Social Security Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Individual applicant; Department of State, Passport Office; and Embassies.''

* * * * *

LDIA 0140

SYSTEM NAME:

Passports and Visas.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DIA personnel requiring passports and visas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain passports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 1000.21–R, Passport Agent Services Regulation; and EO 9397 (SSN).

PURPOSE(S):

Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from DIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated in computer and manual in paper files.

RETRIEVABILITY:

Alphabetically by surname of individual in file folders and by name of individual, date of birth, and/or Social Security Number in computer.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Records maintained in computer system require special access code to retrieve information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Passports are returned to Department of State upon departure of the individual from DIA and computer records are transferred into an archive file for 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Operations Management Branch, ATTN: DAL–2B, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applicant; Department of State, Passport Office; and Embassies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6269 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

[DoD–2006–OS–0097]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Intelligence Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on august 17, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 12, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0435

SYSTEM NAME:

DIA Awards Files (February 22, 1993, 58 FR 10613).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with: ''DIA Military Awards Files''.

SYSTEM LOCATION:

Delete ''0001'' and replace with: ''5100''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Military personnel, active duty and reserve, and Coast Guard personnel during time of war, recommended for an award while assigned or attached to DIA.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''This file contains supporting documents for the awards nomination and the results of actions or recommendations of endorsing and approving officials for joint and service awards''.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulations; DIA Regulation 21–9, Military Awards program; and EO 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with: ''Paper records in file folders and electronically in a database.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Records are maintained for 2 years within the Agency and then retired to the Washington National Records Center where they are destroyed when 5 years old.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Deputy Director for Human Capital, ATTN: HCH, Defense Intelligence Agency, Washington DC 20340–5100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

RECORD ACCESS PROCEDURE:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rule for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 'Defense Intelligence Agency Privacy Program'; 32 CFR part 319—Defense Intelligence Agency Privacy Program'; or may be obtained from the system manager.''

* * * * *

LDIA 0435

SYSTEM NAME:

DIA Military Awards Files.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, active duty and reserve, and Coast Guard personnel during time of war, recommended for an award while assigned or attached to DIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains supporting documents for the awards nomination and the results of actions or recommendations of endorsing and approving officials for joint and service awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DIA Regulation 21–9, Military Awards Program; and EO 9397 (SSN).

PURPOSE(S):

Information is collected and submitted to determine eligibility for awards and decorations to individuals and units while assigned or attached to the DIA. Information is required for preparation of orders and for inclusion in individual's Service record. Records are used to obtain the approval for the awarding of the decoration, for the compilation of required statistical data and provided to the Military departments when appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronically in a database.

RETRIEVABILITY:

Alphabetically by surname of individual.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Records are maintained for 2 years within the Agency and then retired to the Washington National Records Center where they are destroyed when 5 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Human Capital, ATTN: HCH, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd, Washington DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—''Defense Intelligence Agency Privacy Program''; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency officials, parent Service and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6271 Filed 7–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 18, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 12, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Federal Student Aid Student Aid on the Web (previously the ''Students Portal'').

Frequency: On Occasion; Monthly; Annually.

Affected Public: Individuals or household; Federal Government; state, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,013,550.

Burden Hours: 1,560,825.

Abstract: Federal Student Aid of the U.S. Department of Education seeks renewal of the registration system within the Student Aid on the Web (previously the ''Students Portal''), an Internet Portal Web site (hereafter ''the Web site''). The Web site makes the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Web site uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Web site also provides a database of demographic information that helps Federal Student Aid target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Web site helps us to identify potential customers in the middle school age range and is information that was previously unavailable to us. Only content has been updated on the Web site since its first approval.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3153. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11307 Filed 7–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 17, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the

following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 12, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Teacher Quality Enhancement Grants Program (TQE) Scholarship and Teaching Verification Forms on Scholarship Recipients.

Frequency: On occasion; semi-annually; annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,850.

Burden Hours: 3,090.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act incur a service obligation to teach in a high-need school in a high-need Local Educational Agency (LEA). This information collection consists of a contract to be executed when funds are awarded and a separate teaching verification form to be used by students to document their compliance with the contract's conditions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3069. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11308 Filed 7–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 18, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 12, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: New.

Title: Charter Schools Program (CSP) Grant Award Database.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 76.

Burden Hours: 76.

Abstract: This request is for OMB approval of a new data collection necessary for the Charter School Program (CSP). ED will coordinate this new data collection with the Education Data Exchange Network (EDEN) to reduce respondent burden and fully utilize available data. Specifically, ED will collect CSP grant award information from grantees (state agencies and some schools) to create a new database of current CSP-funded charter schools and award amounts. Once complete, ED will merge student demographic and performance information extracted from the EDEN database onto the database of CSP-funded charter schools. Together, these data will allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3009. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11309 Filed 7–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–291–A]

Application To Export Electric Energy; Dominion Energy Marketing, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Dominion Energy Marketing, Inc. (DEMI) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 17, 2006.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 25, 2004, the Department of Energy (DOE) issued Order No. EA–291 authorizing DEMI to transmit electric energy from the United States to Canada as a power marketer. That Order expired on June 25, 2006.

On June 23, 2006, DEMI filed an application with DOE for renewal of the export authority contained in Order No. EA–297 for an additional five-year term and requested that if accepted, the renewal be effective as of June 26, 2006. DEMI does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which DEMI proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

DEMI will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DEMI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the DEMI application to export electric energy to Canada should be clearly marked with Docket EA–291–A. Additional copies are to be filed directly with Michael C. Regulinski, Esq., Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, VA 23219 and David Martin Connelly, Esquire, Bruder, Gentile and Marcoux, L.L.P., 1701 Pennsylvania Avenue, NW., Suite 900, Washington, DC 20006–5807.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by contacting Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on July 12, 2006.

Ellen Russell,

Acting Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–11335 Filed 7–17–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Advanced Scientific Computing Advisory Committee (ASCAC)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific ComputingAdvisory Committee (ASCAC). Federal Advisory Committee Act (Pub. L. 92–463,86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 8, 2006, 8:30 a.m. to 5 p.m.; Wednesday, August 9, 2006, 9 a.m. to 12:30 p.m.

ADDRESSES: American Geophysical Union, (AGU),2000 Florida Avenue, NW.,Washington, DC 20009–1277.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of AdvancedScientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone (301) 903–7486, (E-mail: *Melea.Baker@science.doe.gov*).

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, August 8, 2006

ASCR Overview.
DOE Science.
SciDAC Overview.
Charge 2, Networking Subcommittee Overview.
Charge 1, Science Based Performance Metrics.
Subcommittee Overview.
Independent Review—Leadership Class Facilities.
Public Comment.

Wednesday, August 9, 2006.

ORNL Leadership Class Petascale Project.
ANL Leadership Class Petascale Project.
Summary Review of Applied Programs in SC.
NERSC Upgrades.
ESNet Upgrades.
Public Comment.

Public Participation. The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of

the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via e-mail (*Melea.Baker@science.doe.gov*). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on July 13, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–11337 Filed 7–17–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–310]

Application for Presidential Permit; Northern Electric Cooperative

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Northern Electric Cooperative (Northern) has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the U.S. border with Canada.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 17, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office), 202–586–9624 or Michael T. Skinker (Program Attorney), 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

By letter dated November 6, 2005, Northern, a member owned electric cooperative organized under the laws of the State of Montana, filed an application with the Office of Electricity Delivery and Energy Reliability (OE) of the Department of Energy (DOE) for a Presidential permit. Northern proposes to construct a 14.4 kilovolt (14.4-kV) distribution circuit, approximately 0.75-mile in length, from a point in Valley County, Minnesota, to the United States border with the Province of Saskatchewan, Canada. North of the border the underground circuit would continue an additional 0.50 mile to a tap into the existing system of SaskPower, a Crown Corporation of Canada. The line would be used to import electric energy into the U.S. to provide electricity to three existing U.S. government-owned water wells and water monitoring stations in Montana. Construction of these international facilities would negate the Northern's need to rebuild 18 miles of deteriorating transmission line that currently serves the water facilities.

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. DOE has previously noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. In this docket DOE specifically requests comment on the appropriateness of applying an open access requirement on Northern's proposed facilities.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Larry Tade, Manager, Northern Electric Cooperative, Inc., Opheim, MT, 59250 and Matthew W. Knierim, Knierim, Fewer & Christoffersen, P.C., 130 Third Street South, P.O. Box 29, Glasgow, MT 59230

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on July 12, 2006.

Ellen Russell,

Acting Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–11332 Filed 7–17–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory

Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: August 10, 2006 at 8:30 a.m.

ADDRESSES: California Energy Commission, Hearing Room A, 1516 Ninth Street, MS–29, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–8668 or Harriet Foster at (202) 586–4541; e-mail: *harriet.foster@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Receive update on collaboration with USDA.
- Review status of 2005 Annual Report.
- Receive an update on the status and awardees of the FY 2006 joint solicitation.
- Receive an update on the status of the FY 2007 joint solicitation.
- Review status of Vision and Roadmap updates.
- Meet with representatives from California Energy Commission.
- Discuss Analysis, Policy, and other subcommittee business.
- Approve 2006 Recommendations to Secretaries.
- Receive information on Federal Advisory Committees relevant to biomass.
- Discuss 2007 meeting schedule.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Neil Rossmeissl at 202–586–8668 or the Biomass Initiative at 202–586–4541 or *harriet.foster@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 13, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–11336 Filed 7–17–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–143]

ANR Pipeline Company; Notice of Negotiated Rate Filing

July 12, 2006.

Take notice that on July 10, 2006, ANR Pipeline Company (ANR) tendered for filing and acceptance six copies and amended negotiated rate arrangement between ANR and Wisconsin Gas LLC. ANR requests that the negotiated rate arrangement become effective pursuant to the agreement's term provision.

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. E6–11352 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–882–000; ER06–882–001]

Bayside Power, L.P.; Notice of Issuance of Order

July 12, 2006.

Bayside Power, L.P. (Bayside) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary at market-based rates. Bayside also requested waivers of various Commission regulations. In particular, Bayside requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Bayside.

On July 12, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Bayside should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 11, 2006.

Absent a request to be heard in opposition by the deadline above, Bayside is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bayside, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Bayside's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11359 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–428–000]

Guardian Pipeline, L.L.C.; Notice of Tariff Filing

July 12, 2006.

Take notice that on July 7, 2006, Guardian Pipeline, L.L.C. (Guardian) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to become effective August 6, 2006.

Fourth Revised Sheet No. 100
Second Revised Sheet No. 104
Original Sheet No. 220
Original Sheet No. 221
Sheet Nos. 222–229

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. E6–11357 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–987–000; ER06–987–001]

HLM Energy LLC; Notice of Issuance of Order

July 12, 2006.

HLM Energy LLC (HLM Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. HLM Energy also requested waivers of various Commission regulations. In particular, HLM Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by HLM Energy.

On July 11, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by HLM Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 10, 2006.

Absent a request to be heard in opposition by the deadline above, HLM Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of HLM Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of HLM Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11353 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–395–001]

Iroquois Gas Transmission System, L.P.; Notice of Change to FERC Gas Tariff

July 12, 2006.

Take notice that on July 10, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on July 20, 2006:

Second Revised Sheet No. 49A
Fourth Revised Sheet No. 59A
Third Revised Sheet No. 80

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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. E6–11356 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–429–000]

Portland General Electric Company; Notice of Proposed Changes in FERC Gas Tariff

July 12, 2006.

Take notice that on July 10, 2006, Portland General Electric Company (PGE) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective August 7, 2006.

First Revised Sheet No. 24
Second Revised Sheet No. 30
Second Revised Sheet No. 62
First Revised Sheet No. 86

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. E6–11358 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–229–003]

Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 12, 2006.

Take notice that on July 7, 2006, Trunkline LNG Company, LLC (Trunkline LNG) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective April 5, 2006 and July 8, 2006, respectively:

Second Revised Sheet No. 6
Third Revised Sheet No. 6

Trunkline LNG states that the purpose of this filing is to reflect the implementation of negotiated rate transactions.

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. E6–11355 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2692–032, 2603–012, and 2619–012; North Carolina]

Duke Power Company LLC ; Notice of Availability of Environmental Assessment

July 12, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission) regulations (18 CFR part 380), Commission staff reviewed the applications for licenses for the Nantahala, Franklin, and Mission projects (Nantahala West Projects) and prepared a combined environmental assessment (EA). The projects are located on the Nantahala, Little Tennessee, and Hiwassee rivers, respectively, in Macon and Clay counties, North Carolina.

In this EA, Commission staff analyzes the probable environmental effects of implementing the projects and conclude that approval of the projects, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Additional information about the projects is available from the Commission's Office of External Affairs at (202) 502–6088, or on the Commission's Web site using the ''eLibrary'' link. For assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676; for TTY, call (202) 502–8659.

For further information, please contact Carolyn Holsopple at (202) 502–6407, or at *carolyn.holsopple@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–11354 Filed 7–17–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8198–7]

Air Quality Management Subcommittee to the Clean Air Act Advisory Committee (CAAAC) Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Open Meeting Notice: Pursuant to 5 U.S.C. App.2 section 10(a)(2), notice is hereby given that the Air Quality Management subcommittee to the Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, August 1 and Wednesday, August 2, 2006 from approximately 8:30 a.m. to 5 p.m. at the Adam's Mark Hotel, 1550 Court Place, Denver, Colorado. Any member of the public who wishes to submit written or brief oral comments; or who wants further information concerning this meeting should follow the procedures outlined in the section below titled ''Providing Oral or Written Comments at this Meeting''. Seating will be limited and available on a first come, first served basis. In order to insure copies of printed materials are available, members of the public wishing to attend this meeting are encouraged to contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, Fax (919) 685–3307 or by mail at U.S. EPA, Office of Quality Planning and Standards (Mail Code C 301–04), 109 T. W. Alexander Drive, Research Triangle Park, NC 27711 or by e-mail at: *whitlow.jeff@epa.gov* by noon Eastern Time on July 26, 2006. For information on access or services for individuals with disabilities or to request accommodation of a disability, please contact Mr. Whitlow, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Inspection of Committee Documents: The subcommittee agenda and any documents prepared for the meeting will be sent to participants via e-mail prior to the start of the meeting. Thereafter, these documents, together with the meeting minutes, can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac.*

FOR FURTHER INFORMATION CONTACT: Concerning the Air Quality Management subcommittee to the CAAAC, please contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, FAX (919) 685–3307 or by mail at U.S. EPA Office of Air Quality Planning and Standards (Mail Code C 301–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, or e-mail at: *whitlow.jeff@epa.gov.* Additional Information about the CAAAC and its subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac.*

Providing Oral or Written Comments at this Meeting: It is the policy of the subcommittee to accept written public comments of any length and to accommodate oral public comments whenever possible. The subcommittee expects that public statements presented at this meeting will not be repetitive of previously-submitted oral or written

statements. Oral Comments: In general, each individual or group requesting an oral presentation at this meeting is limited to a total time of five minutes (unless otherwise indicated). However, no more than 30 minutes total will be allotted for oral public comments at this meeting; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be in writing (e-mail, fax or mail) or received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Written Comments: Although the subcommittee accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by Mr. Whitlow no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the subcommittee members for their consideration. Comments should be supplied to Mr. Whitlow (preferably via e-mail) at the address/contact information noted above, as follows: One hard copy with original signature or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files).

Dated: July 11, 2006.

Richard A. Wayland,

Acting Director, Outreach and Information Division, Office of Air Quality Planning and Standards.

[FR Doc. 06–6275 Filed 7–17–06; 8:45am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0606;FRL–8080–5]

Notice of Receipt of a Request for an Amendment to Delete Acid Copper Chromate (ACC) Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: Comments must be received on or before August 17, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0606, by one of the following methods:

- *Federal eRulemaking Portal. http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*. Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*. OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2006-0606. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-308-6422; e-mail address: heyward.adam@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from the registrant to delete uses in certain pesticide registrations. This registration is listed in Table 1 of this unit by registration number, product name, active ingredients, and specific uses deleted:

TABLE 1.—REGISTRATION WITH REQUEST FOR AMENDMENT TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
3008-60	ACC 50% Wood Preservative	Copper Oxide (14.07%)Chromic Acid(35.46%)	All residential uses

Users of these products who desire continued use on sites being deleted should contact the applicable registrant before August 17, 2006 to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit, by EPA company number.

TABLE 2.—REGISTRANT REQUESTING AMENDMENT TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA company no.	Company name and address
3008	Osmose, Inc.980 Ellicott St.Buffalo, NY 14209-2398

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to the person named under **FOR FURTHER INFORMATION CONTACT** using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than August 17, 2006.

V. Provisions for Disposition of Existing Stocks

The registrant is no longer manufacturing or distributing this product, and has requested no existing stocks provision.

List of Subjects

Environmental protection, Pesticides and pests, acid copper chromate, ACC.

Dated: July 12, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E6–11342 Filed 7–17–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0172; FRL–8198–8]

Draft Staff Paper for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about July 18, 2006, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft document, *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information* (Draft Staff Paper) (Chapters 1–5 and 7–8). Chapter 6 (*Staff Conclusions on the Primary Ozone National Ambient Air Quality Standards*) of the Draft Staff Paper will be made available on or about July 25, 2006. The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, *Air Quality Criteria for Ozone and Related Photochemical Oxidants*, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for ozone.

The OAQPS also will make available for public review and comment related draft technical support documents, *Ozone Population Exposure Analysis for Selected Urban Areas* (draft Exposure Analysis), *Ozone Health Risk Assessment for Selected Urban Areas* (draft Risk Assessment), and *Technical Report on Ozone Exposure, Risk and Impact Assessments for Vegetation* (draft Environmental Assessment).

Availability of Documents

The following documents are available for review by the CASAC Ozone Panel in the form of printed copies and a CD–ROM containing these electronic files or by downloading the documents from the EPA Web site:*http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html* for the Staff Paper and *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_td.html* for the technical support documents and staff memos.

DATES: Comments on the Draft Staff Paper, draft Exposure Analysis, draft Risk Assessment, and draft Environmental Assessment should be submitted on or before September 18, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0172 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov*.
- Fax: 202–566–1741.
- Mail: Docket EPA–HQ–OAR–2005–0172, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0172. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the address listed above for hand delivery of comments. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. David McKee, Office of Air Quality Planning and Standards (Mail Code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *mckee.dave@epa.gov;* telephone: (919) 541–5288; fax: (919) 541–0237.

SUPPLEMENTARY INFORMATION:

I. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background on the Ozone NAAQS Review

Section 108(a) of the CAA directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *'' Under section 109 of the CAA, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the CAA subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Also, EPA is to retain or, if appropriate revise, the NAAQS based on the revised criteria, which have undergone review by the Clean Air Scientific Advisory Committee (CASAC).

The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the CAA (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information, and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the CAA. The CASAC is a Federal advisory committee under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel consists of the members of the chartered CASAC, is supplemented by subject-matter experts, and complies with the provisions of FACA.

Ozone is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. Presently, EPA is reviewing

the criteria and NAAQS for ozone. This review includes preparation of two key documents, the Air Quality Criteria for Ozone and Related Photochemical Oxidants (''Criteria Document'') and a related ''Staff Paper.'' The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in the Criteria Document and identify critical elements that EPA staff believe should be considered in reviewing the NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Criteria Document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

In January 2005, a first external review draft of the Criteria Document was released by EPA for public review and comment and for review by the CASAC of EPA's Science Advisory Board (70 FR 4850, January 31, 2005) at a public meeting held in May 2005. Comments received from review of the first draft document were considered in preparing the second draft Criteria Document released for public review and comment in August 2005 (70 FR 51810, August 31, 2005). Based on this document, the first Draft Staff Paper was released in November 2005 (70 FR 69761, November 17, 2005), and reviewed at a public meeting on December 8, 2005. Based on the information contained in the final Criteria Document, released in March 2006 (71 FR 10030, February 28, 2006), the second Draft Staff Paper includes assessments and analyses related to: (1) Air quality characterization; (2) integration and evaluation of health information; (3) exposure analysis; (4) health risk assessment; and (5) evaluation of information on vegetation damage and other welfare effects. The second Draft Staff Paper contains staff conclusions and options with respect to possible retention or revision of the current primary (health-based) and secondary (welfare-based) standards and identifies alternative standards for consideration by the Administrator.

The draft Exposure Analysis, Risk Assessment and Environmental Assessment technical support documents describe and present the results from an ozone exposure analysis and health risk assessment in several urban areas, and the impact of ozone on the environment. Draft plans upon which these assessments are based, the *Ozone Health Assessment Plan: Scope and Methods for Exposure Analysis and Risk Assessment* and the *Scope and Methods for Environmental Assessment Plan*, were previously reviewed by CASAC and the public. Comments received on those plans have been considered in developing the draft Exposure Analysis, Risk Assessment and Environmental Assessment technical support documents being released at this time. The exposure analysis, risk assessment, and environmental assessment methodologies and results are also discussed in the second Draft Staff Paper.

The EPA is soliciting advice and recommendations from the CASAC by means of a peer review of the second Draft Staff Paper and drafts of the Exposure Analysis, Risk Assessment, and Environmental Assessment at an upcoming public meeting of the CASAC scheduled for August 24 and 25, 2006. A **Federal Register** notice will inform the public of the location of that meeting. Following the CASAC meeting, EPA will consider comments received from CASAC and the public in preparing a final Staff Paper and final Exposure Analysis, Risk Assessment, and Environmental Assessment technical support documents.

Dated: July 13, 2006.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–11343 Filed 7–17–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 14, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Fidelity Mutual Holding Company and Life Design Holding Company, both of Fitchburg, Massachusetts; to become a bank holding company by acquiring Fidelity Co-Operative Bank, Fitchburg, Massachusetts.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Oakland Financial Services, Inc., Oakland, Iowa; to aquire up to 33.3 percent of the non voting equity of Otoe County Bancorporation, Inc., Nebraska City, and thereby indirectly acquire Otoe County Bank & Trust Company, Nebraska City, Nebraska.

2. Southwest Company, Sidney, Iowa; to acquire up to 33.3 percent of the non voting equity of Otoe County Bancorporation, Inc., Nebraska City, Nebraska, and thereby indirectly acquire Otoe County Bank & Trust Company, Nebraska City, Nebraska.

Board of Governors of the Federal Reserve System, July 13, 2006

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11322 Filed 7–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, July 24, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions)

involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, July 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–6351 Filed 7–14–06; 2:44 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06–06BL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the HIV Testing Social Marketing Campaign (HTSMC)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves the evaluation of the HIV Testing Social Marketing Campaign (HTSMC), a CDC-sponsored social marketing campaign aimed at increasing HIV testing rates among young, single, African American women. The CDC has designed an efficacy study to evaluate the HTSMC and its messages under controlled conditions. The study entails selecting a sample of single African American females, ages 18 to 34, with less than 4 years of college education and collecting baseline data on their knowledge, attitudes, beliefs, intentions, and behaviors related to HIV testing. The study represents an ''efficacy'' methodology in that participants will be divided into treatment and control conditions. Participants in the treatment condition, will be exposed to campaign materials including radio advertisements, a billboard, and an informational booklet that will be distributed over the Internet. Thus the study participants' exposure will occur under controlled conditions, without the distractions and variability of potential exposure in the real world. As part of the advertisement stimuli package, the billboard advertisement will appear as part of the online log-in for each stimuli session in order to simulate the appearance of a sign. Therefore, we do not estimate any additional burden for exposure to the billboard advertisement.

Key outcomes related to the HTSMC will be measured in two follow-up surveys. The first follow-up survey will occur 2 weeks after the baseline survey. The second follow-up survey will occur 6 weeks after the baseline survey. Comparisons of changes in these outcomes would then be made between participants in the treatment and control conditions. Findings from this study will be used by CDC and its partners to inform current and future program activities.

We expect a total of 1,630 participants to complete the baseline survey. The 1,630 participants who complete the baseline survey will be randomly assigned to the treatment or control condition. 815 participants (the treatment condition) will be exposed to the radio ad and booklet. Of the 1,630 participants who completed the baseline survey, we expect 1,140 to complete the first follow-up survey. Of the 1,140 who complete the first follow-up survey, we expect 800 to complete the second follow-up survey, which will have fewer questions than the first follow-up survey because it will only pertain to questions about behavior change and selected behavioral intentions.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline survey	1,630	1	15/60	408
Radio ad stimuli viewing	815	1	18/60	245
Booklet reading	815	1	15/60	204
Follow-up survey 1	1,140	1	15/60	285
Follow-up survey 2	800	1	5/60	67
Total				1,209

Dated: July 10, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–11340 Filed 7–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0333]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance: Emergency Use Authorization of Medical Products

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 August 17, 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: FDA Desk Officer, 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.

Draft Guidance: Emergency Use Authorization of Medical Products

The Federal Food, Drug, and Cosmetic Act (the act) permits the Commissioner of FDA (the Commissioner) to authorize the use of unapproved medical products or unapproved uses of approved medical products during an emergency declared under section 564 of the act (21 U.S.C. 360bbb–3). The data to support issuance of an emergency use authorization (EUA) must demonstrate that, based on the totality of the scientific evidence available to the Commissioner, including data from adequate and well-controlled clinical trials (if available), it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing a serious or life-threatening disease or condition (21 U.S.C. 360bbb–3(c)). Although the exact type and amount of data needed to support an EUA may vary depending on the nature of the declared emergency and the nature of the candidate product, FDA recommends that a request for consideration for an EUA include scientific evidence evaluating the product's safety and effectiveness, including the adverse event profile for diagnosis, treatment, or prevention of the serious or life-threatening disease or condition, as well as data and other information on safety, effectiveness, risks and benefits, and (to the extent available) alternatives.

Under section 564 of the act, the Commissioner may establish conditions on the approval of an EUA. Section 564(e) requires the Commissioner (to the extent practicable given the circumstances of the emergency) to establish certain conditions on an authorization that the Commissioner finds necessary or appropriate to protect the public health and permits the Commissioner to establish other conditions that he finds necessary or appropriate to protect the public health. Conditions authorized by section 564(e) of the act include, for example: Requirements for information dissemination to health care providers or authorized dispensers and product recipients; adverse event monitoring and reporting; data collection and analysis; recordkeeping and records access; restrictions on product advertising, distribution, and administration; and limitations on good manufacturing practices requirements. Some conditions, the statute specifies, are mandatory to the extent practicable for authorizations of unapproved products and discretionary for authorizations of unapproved uses of approved products. Moreover, some conditions may apply to manufacturers of an EUA product, while other conditions may apply to any person who carries out any activity for which the authorization is issued. Section 564 of the act also gives the Commissioner authority to establish other conditions on an authorization that the Commissioner finds to be necessary or appropriate to protect the public health.

For purposes of estimating the burden of reporting, FDA has established six categories of respondents which include: (1) Those who file a Request for Consideration for an EUA after a determination of actual or potential emergency and, in lieu of submitting the data, provide reference to a pending or approved application; (2) those who file a Request for Consideration for an EUA and the data after a determination of actual or potential emergency, without reference to a pending or approved application; (3) those who submit data to FDA on a candidate EUA product, which is subject to a pending or approved application, prior to a determination of actual or potential emergency; (4) those who submit data to FDA prior to a determination of actual or potential emergency about a candidate EUA product for which there is no pending or approved application; (5) manufacturers of an unapproved EUA product who must report to FDA regarding such activity; and (6) State and local public health officials who carry out an activity related to an unapproved EUA product (e.g., administering the product to civilians) and who must report to FDA regarding such activity.

For purposes of estimating the burden of recordkeeping, FDA has calculated the anticipated burden on manufacturers of unapproved products authorized for emergency use. The agency anticipates that the Federal Government will perform some of the additional recordkeeping necessary for unapproved products (e.g., related to the administration of unapproved EUA products to military personnel). FDA also anticipates that some State and local public health officials may be required to perform additional recordkeeping (e.g., related to the administration of unapproved EUA products to civilians) and calculated a recordkeeping burden for those activities.

No burden was attributed to reporting or recordkeeping for unapproved uses of approved products, because those products already are subject to approved collections of information (adverse experience reporting for biological products is approved under OMB control number 0910–0308 through May 31, 2005; adverse drug experience reporting is approved under OMB control number 0910–0230 through September 30, 2005; and investigational new drug applications (IND) regulations are approved under OMB control number 0910–0014 through January 31, 2006), and any additional burden imposed by this proposed collection would be minimal. Thus, FDA estimates the burden of this collection of information as follows:

The annual burden estimate for this information collection is 1,414 hours. The estimated reporting burden for this collection is 754 hours and the estimated recordkeeping burden is 660 hours.

In the **Federal Register** of July 5, 2005 (70 FR 38689), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on the information collection.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Request for Consideration; Pending application on file	1	1	1	15	15
Request for Consideration; No application pending	1	1	1	50	50
Pre-emergency submissions; Pending application on file	10	1	10	20	200
Pre-emergency submissions; No application pending	3	1	3	75	225
Manufacturers of an unapproved EUA product	3	4	12	2	24
State and local public health officials; Unapproved EUA product	30	4	120	2	240
Total					754

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Manufacturers of an unapproved EUA product	3	4	12	25	300
State and local public health officials; Unapproved EUA product	30	4	120	3	360
Total					660

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11287 Filed 7–17–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on a Public Advisory Committee; Pediatric Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Pediatric Advisory Committee in the Office of the Commissioner. Nominations will be accepted for vacancies that have occurred on or before June 30, 2006.

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: No cutoff date is established for the receipt of nominations. However, nominations received on or before July 28, 2006, will be given first consideration for membership on the Pediatric Advisory Committee.

ADDRESSES: All nominations for membership should be sent to Jan Johannessen (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jan N. Johannessen, Office of Science and Health Coordination (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, FAX 301–827–3042, e-mail: *Jan.Johannessen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Pediatric Advisory Committee. There are currently six vacancies on this committee. These vacancies need to be filled as soon as possible.

I. Function of the Pediatric Advisory Committee

The committee advises the Commissioner of Food and Drugs on pediatric therapeutics, pediatric research, and other matters involving pediatrics for which FDA has regulatory responsibility. The Committee also advises and makes recommendations to the Secretary of Health and Human Services under 21 CFR 50.54 for products regulated by FDA and 45 CFR 46.407 on research involving children as

subjects that is conducted or supported by the Department of Health and Human Services and involves a product regulated by FDA.

II. Qualifications

Persons nominated for membership on the committees shall have scientific expertise in one or more of the following areas: Pediatric research, pediatric subspecialties, pediatric therapeutics, statistics, and/or biomedical ethics. There is a particular need for clinical and/or scientific expertise in pediatric neurology, adolescent medicine or statistics. The term of office is up to 4 years, depending on the appointment date.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the Pediatric Advisory Committee. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 10, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. 06–6276 Filed 7–17–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0169]

Guidance on Useful Written Consumer Medication Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Useful Written Consumer Medication Information (CMI).'' CMI is written information developed for consumers about prescription drugs that is distributed to consumers when they have prescriptions filled. The guidance discusses general issues and makes recommendations on the content of useful written CMI.

DATES: Submit written or electronic comments on agency guidance at any time

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the offices in processing your request. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Paul Seligman, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5620.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Useful Written Consumer Medication Information (CMI).'' This guidance is intended to assist individuals or organizations (e.g., pharmacies, private vendors, healthcare associations) in developing useful written consumer medication information to comply with Public Law 104–180. CMI is written information about prescription drugs developed by organizations or individuals, other than a drug's manufacturer, that is intended for distribution to consumers at the time of dispensing. Since neither FDA nor the drug's manufacturer reviews or approves CMI, FDA recommends that the developers of written medication information use the factors discussed in this guidance to help ensure that their CMI is useful to consumers.

In the **Federal Register** of May 26, 2005 (70 FR 30467) (the May 2005 guidance), FDA announced the availability of a draft version of this guidance. The May 2005 guidance gave interested persons an opportunity to submit comments through July 25, 2005. All comments received during the comment period have been carefully reviewed and incorporated in this revised guidance where appropriate. As a result of the public comment, we hope that the guidance is clearer and more concise than the draft version.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on useful written CMI. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11329 Filed 7–17–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: June 2006

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 2006, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTION		
AHGOON, BARNEY	FLORENCE, AZ	7/20/2006
AMEY, CONNIE	FOREST GROVE, OR	7/20/2006
ANAYOOR, ABDUL	HOWELL, NJ	7/20/2006
ANTOINE, MIRIAM	NEW ORLEANS, LA	6/21/2004
ASHIEDU, CHUKWINWEIKE	WILMINGTON, DE	7/20/2006
BADRYAN, ARUTYUN	AURORA, CO	7/20/2006
BARCELO, LEMAY	MIAMI, FL	7/20/2006
BOVA, SOFIA	ENCINO, CA	7/20/2006
BROWN, TAMMY	SALINA, KS	7/20/2006
COLINA, BARBARA	HIALEAH, FL	7/20/2006
COUNTRYMAN, CHRISTAL	SALINA, KS	7/20/2006
CUETARA, LUIS	MIAMI, FL	7/20/2006
CUETARA, NERY	MIAMI, FL	7/20/2006
DAY, MARNIE	SPOKANE VALLEY, WA	7/20/2006
DELGADO, HUMBERTO	MIAMI, FL	7/20/2006
DEONARINE, DENIS	DORAL, FL	7/20/2006
DIAZ, ALBERTO	MIAMI, FL	7/20/2006
DOMINGUEZ, GRACIELA	PURCELL, OK	7/20/2006
DORSEY, CRICHELLE	NATCHITOCHES, LA	7/20/2006
DUNCAN, HOWARD	SABETHA, KS	7/20/2006
EDLIN, CHERYL	SPOKANE, WA	7/20/2006
EVANS, ANNIS	GLIDE, OR	7/20/2006
FAMILY HOME HEALTH SERVICES	BURLINGAME, CA	7/8/2003
FERRER, CARLOS	MURRIETA, CA	7/20/2006
FLETCHER, YVONNE	LULING, TX	7/20/2006
FULLER, JANICE	MUSKOGEE, OK	7/20/2006
HEVIA, ANTONIO	MIAMI, FL	7/20/2006
HUYNH, THUY	SPRING, TX	7/20/2006
KOELLERMEIER, KELLY	ALBANY, OR	7/20/2006
KOMAKI, KEITH	ANAHEIM, CA	7/20/2006
KUN, ERIC	SAN GABRIEL, CA	7/20/2006
LEAVITT, KAREN	POCATELLO, ID	7/20/2006
LOW, EUGENE	STOCKTON, CA	7/20/2006
LUPO, DAVID	COLORADO SPRINGS, CO	7/20/2006
MABERRY, BRENDA	LAWRENCE, KS	7/20/2006
MAGDALENO, DANILO	MIAMI, FL	7/20/2006
NEWSOME, BERMAZELL	COLLEGE PARK, GA	7/20/2006
OLIVE, JUAN	HIALEAH, FL	3/10/2006
ORTEGA, DIOMAR	MIAMI, FL	2/24/2006
ORTEGA, SERGIO	HIALEAH, FL	2/24/2006
POSTIGLIONE PHARMACY	PORT CHESTER, NY	7/20/2006
POSTIGLIONE, JOHN	RAY BROOK, NY	7/20/2006
RAMNARINE, DILIAH	SCHENECTADY, NY	7/20/2006
REID, JAMES	JESUP, GA	7/20/2006
ROSENSWEIG, SANFORD	BASTROP, TX	7/20/2006
SARGSIAN, AROUTIOUN	TAFT, CA	7/20/2006
SIMMONS, KEVIN	WALDORF, MD	7/20/2006
SLATTEN, KARL	BOISE, ID	7/20/2006
SMITH, LASHAN	TULSA, OK	7/20/2006
SPRINGHART, WILLIAM	DAYTON, OH	7/20/2006
STAMBULYAN, KARAPET	LOMPOC, CA	7/20/2006
VU, NYOUA	SAN DIEGO, CA	7/20/2006
WASHINGTON, LESLIE	WHITE CASTLE, LA	7/20/2006
WASKOSKY, REBECCA	FARIBAULT, MN	7/20/2006
FELONY CONVICTION FOR HEALTH CARE FRAUD		
COLEMAN, JESSICA	PORTLAND, ME	7/20/2006
DAGDAGAN, MYRNA	DELANO, CA	7/20/2006
DAVIS, FELICE	W PALM BEACH, FL	7/20/2006
DAVIS, MELINDA	HATFIELD, AR	7/20/2006

Subject name	Address	Effective date
DIXON, RANDALL	JOHNSON CITY, TN	7/20/2006
DOUGLAS, LANITA	SEARCY, AR	7/20/2006
FEOLE, KRYSTIN	PITTSFIELD, NH	7/20/2006
FUDERICH, DAVID	PITTSBURGH, PA	7/20/2006
GRODRIAN, BETTY	ODESSA, FL	7/20/2006
HANDLEY, CHASTITY	LULING, TX	7/20/2006
HARDYMAN, REBECCA	BATAVIA, OH	7/20/2006
JEAN, MAGALIE	DAVENPORT, FL	7/20/2006
MCAVOY, GUADALUPE	INDIO, CA	7/20/2006
MCCLUNG, DARLETTA	PONCA CITY, OK	7/20/2006
MCDONALD, SONIA	WEST PALM BEACH, FL	7/20/2006
NEE, MELISSA	PORTLAND, ME	7/20/2006
PANICHELLA, ANTHONY	AUDUBON, NJ	7/20/2006
PHILLIPS, TINA	EAGLE BUTTE, SD	7/20/2006
REGHANTI, MARGUERITE	TAMPA, FL	7/20/2006
SCOTT, CHINA	HUMMELSTOWN, PA	7/20/2006
STEELE, JAN	FAYETTEVILLE, AR	7/20/2006
TODD, LAVENNA	SHAKER HEIGHTS, OH	7/20/2006
TOULOUSE, JASON	MITCHELL, SD	7/20/2006
WANG, YIH-ING	MILPITAS, CA	7/20/2006
WAYCOTT, CAROL	LINCOLN, RI	7/20/2006
YUMAN, GEMMA	SAN BERNARDINO, CA	7/20/2006
FELONY CONTROLLED SUBSTANCE CONVICTION		
ACREE, REBECCA	FT WORTH, TX	7/20/2006
AGGROIA, ABHAY	WOODBRIGE, VA	7/20/2006
ARMSTRONG, JANISE	JACKSONVILLE, FL	7/20/2006
BAUM, TERI	FORT COLLINS, CO	7/20/2006
BETHENCOURT, MAGALY	MIAMI, FL	7/20/2006
BRYANT, TAMMY	LEWISBURG, TN	7/20/2006
CHAPMAN, ALFRED	CLEARWATER, FL	7/1/2006
COTTER, JOHN	SHREVEPORT, LA	7/20/2006
CRAGUN, MICHAEL	PHOENIX, OR	7/20/2006
CYNN, STEVEN	CHARLOTTE, NC	7/20/2006
DEHART, GAIL	GOUVERNEUR, NY	7/20/2006
DEVRIES, LISA	STAUNTON, IL	7/20/2006
EVENSEN, VIKKI	GRAND JUNCTION, CO	7/20/2006
FULTZ, PATRICIA	ZANESVILLE, OH	7/20/2006
GANTT, LISA	LAKELAND, FL	7/20/2006
GOUGALOFF, ROBERTO	HERMOSA BEACH, CA	7/20/2006
HUGHES, LESLIE	SACRAMENTO, CA	7/20/2006
MAZZEO, KIMBERLY	DELRAY BEACH, FL	7/20/2006
QUINN, EILEEN	HOLLYWOOD, FL	7/20/2006
RUBIO, JODIE	IRVING, TX	7/20/2006
SCHULHOF, JERRY	PITTSBURGH, PA	7/20/2006
TIMMONS, ARIF	SEATTLE, WA	7/20/2006
TORRES, ZORIEL	ORLANDO, FL	7/20/2006
TRIPLETT, RICHARD	SPRING, TX	7/20/2006
WEAGLE, PAMELA	DOUGLASVILLE, GA	7/20/2006
PATIENT ABUSE/NEGLECT CONVICTION		
ADAMS, RYGENA	HONOLULU, HI	7/20/2006
BALDERAS, CAROLINA	GUYMON, OK	7/20/2006
CHRISTOR, RUTH	SHREVEPORT, LA	7/20/2006
CRAIG, ANITA	FARRELL, PA	7/20/2006
DEAN, CHARLES	SAN BERNARDINO, CA	7/20/2006
DEL OLMO, MAYRA	MIAMI, FL	7/20/2006
DODSON, JAMES	EUGENE, OR	7/20/2006
DORMAN, DUANE	MITCHELL, SD	7/20/2006
HAYWARD, JOSHUA	COUNCIL BLUFFS, IA	7/20/2006
HYDE, JOANN	MURRAY, UT	7/20/2006
JEMISON, STEPHEN	TUSCALOOSA, AL	7/20/2006
JOHNSON, ERIK	SONOMA, CA	7/20/2006
LOCKE, LAURA	SPRINFIELD, NH	7/20/2006
MCCLARY, RHONDA	BALTIMORE, MD	7/20/2006
MCFADDEN, LORRAINE	BUFFALO, NY	7/20/2006
MCKEE, DEBBIE	DERBY, KS	7/20/2006
MCLEAN, NAKITTA	BALTIMORE, MD	7/20/2006
MONTGOMERY, JESSICA	CAMBRIDGE, MD	7/20/2006
MOSHER, EMMA	PERRY, IA	7/20/2006
PAMBIANCO, JOHN	TRUCKSVILLE, PA	7/20/2006
PEDROZA, JOSE	PARAMOUNT, CA	7/20/2006

Subject name	Address	Effective date
PEMBLE, AARON	WOODWARD, IA	7/20/2006
PENNER, COREY	NEWTON, KS	7/20/2006
READING, ANTHONY	PANAMA CITY, FL	7/20/2006
STEVENS, CHAD	BOONE, IA	7/20/2006
WASHINGTON, GENECE	SHREVEPORT, LA	7/20/2006
CONVICTION-OBSTRUCTION OF AN INVESTIGATION		
HERNANDEZ RIVERA, ALFREDO	MIAMI, FL	7/20/2006
LICENSE REVOCATION/SUSPENSION/SURRENDER		
ACE, EDGAR	MIAMI, FL	7/20/2006
ALDEN, CAROLINE	LAKELAND, FL	7/20/2006
BALL, GREGORY	THOUSAND OAKS, CA	7/20/2006
BARKER, GERTRUDE	LEXINGTON, KY	7/20/2006
BEARDSLEY, JACK	DELRAY BEACH, FL	7/20/2006
BEELER, BETH	PITTSBURGH, PA	7/20/2006
BENNETT, JASON	ST AUGUSTINE, FL	7/20/2006
BOX, STEVEN	MONTICELLO, FL	7/20/2006
BOYD, LARRY	APACHE JUNCTION, AZ	7/20/2006
BROOKS, BRENDA	SACRAMENTO, CA	7/20/2006
BROWNING, GLORIA	BERRY, KY	7/20/2006
BRYERTON, PATRICIA	LACONIA, NH	7/20/2006
CALVERT, JAMES	CULLMAN, AL	7/20/2006
CAMPAGNA, MARY	CORDOVA, TN	7/20/2006
CARTWRIGHT, TERESA	LAUREL, MS	7/20/2006
CHASE, JANET	SAN ANTONIO, TX	7/20/2006
CHAVIERS, TRACY	ANNISTON, AL	7/20/2006
CICCO, MICHELLE	IRWIN, PA	7/20/2006
CLARK, TINA	CLEARFIELD, UT	7/20/2006
COLEMAN, NORMA	NASHVILLE, TN	7/20/2006
COLEMAN, WILLIAM	DALY CITY, CA	7/20/2006
COMPTON, GEORGE	RUSSELLVILLE, AL	7/20/2006
COOK, NANCY	ELDORADO, AR	7/20/2006
DARR, WILLARD	ORANGE PARK, FL	7/20/2006
DAVIS, DORINA	LAS VEGAS, NV	7/20/2006
DEO, PARBHA	HAYWARD, CA	7/20/2006
DIPINTO, DENNIS	CUMBERLAND, RI	7/20/2006
DRISCOLL, RAYMOND	DRACUT, MA	7/20/2006
ELLIOTT, ELIZABETH	KNOXVILLE, TN	7/20/2006
ENGLE, BRENT	HARROGATE, TN	7/20/2006
EVANS, ROBERLYN	MEMPHIS, TN	7/20/2006
FARWELL, AILEEN	BIRMINGHAM, AL	7/20/2006
FERNANDO, IRENE	HAYWARD, CA	7/20/2006
FOULKE, DANNETTE	PADUCAH, KY	7/20/2006
FRANKLIN, ZAYRA	ELK GROVE, CA	7/20/2006
FREEH, NANCY	WINCHESTER, NH	7/20/2006
GARCIA, MARQUES	BOTHELL, WA	7/20/2006
GILVARRY, DANA	DAYTON, TX	7/20/2006
GOICOECHEA, RUTH	BURLEY, ID	7/20/2006
GREENLAW, KAREN	ORRINGTON, ME	7/20/2006
GRIFFIN, MICHAEL	BELLEAIR BLUFFS, FL	7/20/2006
GUTIERREZ, ROGER	SAN FRANCISCO, CA	7/20/2006
HAMILTON, WILLIAM	SAN DIEGO, CA	7/20/2006
HAMMONDS, PAMELA	JACKSONVILLE, FL	7/20/2006
HANAFY, FOUAD	LIVINGSTON, CA	7/20/2006
HENDERSON, RHONDA	CORBIN, KY	7/20/2006
HOOVER, BRENDA	RIO LINDA, CA	7/20/2006
HOSKIE, EVANGELINE	TUCSON, AZ	7/20/2006
HUDSON, MICHELLE	RICHMOND, CA	7/20/2006
INGRAM, TERESA	HAMPTON, TN	7/20/2006
JOHNSON, ROSAMARIA	SAN ANTONIO, TX	7/20/2006
JONES, REGINA	TUSCALOOSA, AL	7/20/2006
JONES, ROBERT	VALLEJO, CA	7/20/2006
KEMBLE, CHARLOTTE	TACOMA, WA	7/20/2006
KENNEDY-RICHARD, KAREN	WORCESTER, MA	7/20/2006
KLEINIK, KATHLEEN	TOMBSTONE, AZ	7/20/2006
KOHLER, SUSAN	HEBER CITY, UT	7/20/2006
KUON, RALPH	MONTEBELLO, CA	7/20/2006
LARIOS, DANIEL	FRESNO, CA	7/20/2006
LAROCK, JUDITH	ENGLEWOOD, CO	7/20/2006
LARUE, LESLIE	OAK HARBOR, WA	7/20/2006
LOCKHART, DIONA	JASPER, AL	7/20/2006

Subject name	Address	Effective date
LOPOTOSKY, MARCI	GLASGOW, KY	7/20/2006
MAREK, CASSANDRA	HEWITT, TX	7/20/2006
MATHEWS, CHRISTINA	LAS VEGAS, NV	7/20/2006
MAXWELL, TIFFANY	RICHLAND, WA	7/20/2006
MCCORMACK, SUSAN	TUSCUMBIA, AL	7/20/2006
MCDIVITT, LOLA	HONOLULU, HI	7/20/2006
MCMURPHEY, BRETT	GREAT FALLS, MT	7/20/2006
MCPHAIL, DANIEL	NORTHFIELD, NH	7/20/2006
MCPIKE, RONALD	BONAPARTE, IA	7/20/2006
MEILLER, MORRIS	MOUNT AIRY, MD	7/20/2006
MERZ, AMY	MURRAY, UT	7/20/2006
MEYER, SHELLEY	DAPHNE, AL	7/20/2006
MILDENHALL, BRYAN	WEST VALLEY CITY, UT	7/20/2006
MILLER, CYNTHIA	LUTZ, FL	7/20/2006
MILLER, ROBIN	SALISBURY, NC	7/20/2006
MILLETT, DEBORAH	CAPE NEDDICK, ME	7/20/2006
MILLS, KIMBERLEE	PROVO, UT	7/20/2006
MIRANDA, JOYCE	TEMPE, AZ	7/20/2006
MORALES, GLORIA	ATASCADERO, CA	7/20/2006
MORAN, LAURA	TOOELE, UT	7/20/2006
NADREAU, MARC	WOODLAND, CA	7/20/2006
NICHOLS, KAY	HUNTINGTON, TX	7/20/2006
NIPPER, SUE	TUCSON, AZ	7/20/2006
NOBLE, CHRISTOPHER	KNOXVILLE, TN	7/20/2006
NUGIEL, DALE	LOS ANGELES, CA	7/20/2006
OLDHAM, RACHEAL	BELLEVUE, TN	7/20/2006
OSBURN, MARGARET	SELMA, AL	7/20/2006
OWENS, DERRICK	ATHENS, AL	7/20/2006
PALCONETE, EMMA	SAN JOSE, CA	7/20/2006
PEREZ, RONALD	LAKEWOOD, CA	7/20/2006
PRASCHUNUS, MAUREEN	WARREN, RI	7/20/2006
PROBY, CHARLES	PHOENIX, AZ	7/20/2006
PUCKETT, KRISTI	FREDRICKSBURG, TX	7/20/2006
RAMIREZ, MANUEL	FIREBAUGH, CA	7/20/2006
REESE, LONNIE	WENATCHEE, WA	7/20/2006
REILLY, TRACY	LOUISVILLE, KY	7/20/2006
REYES, CANDELARIA	SANTA MARIA, CA	7/20/2006
ROBERTS, TIMOTHY	KINGMAN, AZ	7/20/2006
RODMAN, ANNIE	BULLHEAD CITY, AZ	7/20/2006
RUSSELL, KATHERINE	LOYALTON, CA	7/20/2006
SACHEK, LEANN	WASHINGTON, PA	7/20/2006
SADEGHI, FIROOZ	GLENDALE, CA	7/20/2006
SANTIAGO, JOHN	JACKSON HEIGHTS, NY	7/20/2006
SARACENI, ESTELLA	DORCHESTER, MA	7/20/2006
SCHNEIDER, BRUCE	MATAWAN, NJ	7/20/2006
SCOTT, LISA	MERIDIAN, MS	7/20/2006
SINGLETON, PAMELA	MOBILE, AL	7/20/2006
SMITH, DREW	TACOMA, WA	7/20/2006
SMITH, JEANETTA	PARAMOUNT, CA	7/20/2006
SPRATLEY, DOUGLAS	TEMPE, AZ	7/20/2006
SPRINGER, JACKIE	OVERLAND PARK, KS	7/20/2006
STANTON, SHEILA	MESA, AZ	7/20/2006
SWINGLE, KERMIT	BOULDER CITY, NV	7/20/2006
TATE, BONNIE	BIRMINGHAM, AL	7/20/2006
TAYLOR, DULCIE	BARRE, VT	7/20/2006
THOMPSON, CARLA	GOSHEN, VA	7/20/2006
THRASHER, KIM	BIRMINGHAM, AL	7/20/2006
TOMLINSON, KARYN	YERINGTON, NV	7/20/2006
TRETBAR, LAWRENCE	SHAWNEE MISSION, KS	7/20/2006
TRUMP, CHRISTINA	MOORESVILLE, NC	7/20/2006
UNDERWOOD, CARLA	MOUNT PLEASANT, TN	7/20/2006
WALRAVEN, MISTI	ARAB, AL	7/20/2006
WERMAGER, ANDREA	PALMER, AK	7/20/2006
WILCOWSKI, LEANN	VANCOUVER, WA	7/20/2006
WILLIAMS, JACQUELINE	SAINT AUGUSTINE, FL	7/20/2006
WOOD, MARINA	CHULA VISTA, CA	7/20/2006
WORTHINGTON, FRANK	TUCSON, AZ	7/20/2006
ZELTZER, JUDY	HERNANDO, FL	7/20/2006
FRAUD/KICKBACKS/PROHIBITED ACTS/SETTLEMENT AGREEMENT		
AIKEN, STUART	OLNEY, MD	5/5/2006
DEVALDES, GREGORY	VIRGINIA BEACH, VA	4/28/2006
KEATLEY, HUGH	BECKLEY, WV	5/12/2006

Subject name	Address	Effective date
MOSHER, DENNIS	CHEYENNE, WY	8/12/2005
WEBBER, TRACY	MABSCOTT, WV	4/28/2006
OWNED/CONTROLLED BY EXCLUDED/CONVICTED INDIVIDUAL+		
EARTHMED INC	SPARTANBURG, SC	7/20/2006
HOANG T. TRAN, DDS, INC	HANFORD, CA	7/20/2006
MAGALY BETHENCOURT MEDICAL SERVICES, INC	MIAMI, FL	7/20/2006
PACIFIC CARE MEDICAL SUPPLY, INC	LONG BEACH, CA	7/20/2006
RONALD P. MCPIKE, D. O., P. C	BONAPARTE, IA	7/20/2006
DEFAULT ON HEAL LOAN		
BUI, KHAI	SPRINGFIELD, MA	7/20/2006
KALTER, HOWARD	NAPLES, FL	7/20/2006
KANTRO, SCOTT	POUND RIDGE, NY	7/20/2006
LANE, ABBIE	BROOKLYN, NY	7/20/2006
RICHARD, PATTI	HAVERHILL, MA	7/20/2006
ROSEN, MICHAEL	TEMPE, AZ	7/20/2006
SCHWARTZ, GREGG	AMBLER, PA	7/20/2006
TAN, DANNY	SALINAS, CA	7/20/2006

Dated: June 11, 2006.

Maureen R. Byer,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. E6–11330 Filed 7–17–06; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Construction Grant Programs

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Section 52b.1(b) of the regulations governing National Institutes of Health (NIH) construction grants, codified at 42 CFR part 52b, authorizes the NIH Director to publish periodically a list of the construction grant programs to which the construction grant regulations apply. This Notice announces the most recent list of the programs covered by the regulations.

DATES: *Effective Date:* July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, telephone 301–496–4607 (not a toll-free number), fax 301–402–0169, e-mail *jm40z@nih.gov.*

SUPPLEMENTARY INFORMATION: The NIH published the final rule, ''National Institutes of Health Construction Grants,'' in the **Federal Register**, November 22, 1999 (64 FR 63721–63727), revising the regulations at 42 CFR part 52b, (then) titled, National Cancer Institute Construction Grants, for the purpose of making them applicable to all NIH financial assistance programs with construction or modernization grant authority, except for certain alterations and improvements under research project grants and center grants, and to make certain other changes, including retitled them, ''National Institutes of Health Construction Grants.'' In lieu of specifically listing each NIH construction grant program to which the regulations apply in § 52b.1 of the regulations, the applicability section, we revised § 52b.1 to apply across-the-board to all NIH construction grant programs, except for those few programs specifically excluded by the section. This action has the advantage of assuring that any new NIH construction grant programs enacted by Congress would have implementing regulations without the necessity of having to amend the regulations. The final rule authorized the Director of NIH to publish periodically a list of construction grant programs covered by the regulations. We indicated that the list would be for informational purposes only and would not restrict the applicability of the regulations.

We are publishing this updated list of programs to which the construction grants regulations apply to reflect the extension of authority for construction of research facilities, previously held only by the National Center for Research Resources (NCRR) under section 481A of the Public Health Service (PHS) Act, to the National Institute of Allergy and Infectious Diseases (NIAID), as amended by provisions of the Project Bioshield Act of 2004 (Pub. L. 108–276). As amended, section 481A now authorizes the Director of NIH, acting through the Director of NCRR or the Director of NIAID, to make grants or award contracts to public and nonprofit private entities to expand, remodel, renovate, or alter existing research facilities or construct new research facilities, subject to the provisions of section 481A.

Additionally, we are publishing this updated list of program to reflect the authority of the Director of the National Center on Minority Health and Health Disparities (NCMHD) to make grants to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research, as authorized under section 485F(b)(2) of the PHS Act, as amended by section 102 of Public Law 106–525, the Minority Health and Health Disparities Research and Education Act of 2000.

The updated listing of construction grant authorities to which the National Institutes of Health Construction Grant regulations, codified at 42 CFR Part 52b, apply includes the following:

(1) Grants for construction or renovation of facilities in carrying out the National Cancer Program, as authorized by section 413(b)(6)(B) of the PHS Act (42 U.S.C. 285a–2(b)(6)(B));

(2) Federal payment under a grant for construction to pay for all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for center for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, control, and

treatment methods for cancer, as authorized by section 414(b) of the PHS Act (42 U.S.C. 285a–3(b));

(3) Grants for construction or renovation of facilities, to carry out the National Heart, Lung, and Blood Disease and Blood Resources Program, as authorized by section 421(b)(2)(B) of the PHS Act (42 U.S.C. 285b–3(b)(2)(B));

Grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basis operating support for centers for basic and clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention and treatment methods for heart, blood vessel, lung, or blood diseases, as authorized by section 442(c)(3) of the PHS Act (42 U.S.C. 285b–4(c)(3));

(5) Development and modernization of new and existing centers for arthritis and musculoskeletal diseases, as authorized by section 441(a) of the PHS Act (42 U.S.C. 285d–6(a));

(6) Grants for public and private nonprofit vision research facilities, as authorized under section 455 of the PHS Act (42 U.S.C. 285i);

(7) Development and modernization of new and existing centers for studies of disorders of hearing and other communication processes, as authorized by section 464C(a) of the PHS Act (42 U.S.C. 285m–3(a));

(8) Grants for the construction or renovation of facilities for research into the development and use of medications to treat drug abuse and addiction, as authorized by section 464P(b) of the PHS Act (42 U.S.C. 285o–4(b));

(9) Grants to public and nonprofit private entities to expand, remodel, renovate, or alter existing biomedical and behavioral research facilities or construct new research facilities, as authorized by section 481A(a) of the PHS Act (42 U.S.C. 287a–2(a));

(10) Grants to public or nonprofit private entities to construct, renovate, or otherwise improve regional centers for research on primates, as authorized by section 481B(a) of the PHS Act (42 U.S.C. 287a–3(a));

(11) Grants to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research, as authorized by section 485F(b)(2) of the PHS Act U.S.C. 287c–32(b)(2)); and

(12) Grants for the construction or renovation of facilities for carrying out AIDS research, as authorized by section 2354(a) of the PHS Act (42 U.S.C. 300cc–41(a)).

The Catalogue of Federal Domestic Assistance (CFDA) numbered programs affected by title 42 of the Code of Federal Regulations, part 52b are:

93.131—Shared Research Facilities for Heart, Lung, and Blood Diseases.
93.173—Research Related to Deafness and Communication Disorders.
93.279—Drug Abuse and Addiction Programs.
93.307—Minority Health and Health Disparities Research.
93.389—National Center for Research Services.
93.392—Cancer Construction.
93.846—Arthritis, Musculoskeletal and Skin Diseases Research.
93.855—Allergy, Immunology and Transplantation Research.
93.867—Vision Search.

Dated: May 19, 2006.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: July 7, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–6262 Filed 7–17–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a closed teleconference meeting of the SAMHSA/Center for Mental Health Services (CMHS) National Advisory Council to be held on July 27, 2006.

The meeting will include the review, discussion and evaluation of individual grant applications.Therefore, the meeting will be closed to the public as determined by the SAMHSAAdministrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2., section 10(d).

A summary of the meeting and a roster of Council members may be obtained after the meeting by contacting Mr. Michael Malden (see contact information below) or by accessing the SAMSHSA Council Web site, *http://www.samhsa.gov/council.*

Committee Name: Substance Abuse and Mental Health Services AdministrationCenter for Mental Health Services National Advisory Council.

Meeting Date: July 27, 2006.

Place: SAMHSA Building, 1 Choke Cherry Road, Conference Room 6–1060, Rockville, Maryland 20857.

Type: (Closed) July 27, 2006; 12:30 p.m.–2 p.m.

For Further Information Contact: Michael Malden,Acting Executive Secretary, SAMHSA/CMHS National Advisory Council, 1 Choke Cherry, Room 6–1083, Rockville, Maryland 20857.Telephone: (240) 276–1896. Fax: (240) 276–1850.E-mail: *Michael.Malden@samhsa.hhs.gov.*

Dated: July 11, 2006.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E6–11341 Filed 7–17–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services at 71 FR 19740–19741, April 17, 2006 is amended to reflect changes of the functional statements for the Center for Mental Health Services (CMHS). This amendment reflects the placement of the organization and financing activities from the Office of the Director, CMHS, into the Division of State and Community Systems Development (DSCSD), CMHS. DSCSD serves as a focal point for planning, supporting and promoting effective programs concerned with improving State mental health services within the Nation, as well as obtaining, analyzing and disseminating statistics on the major characteristics of the national mental health service systems. The organization and financing activities is closely aligned with other mental health programs managed by this Division. This realignment of function will have a positive impact on organizational effectiveness. The changes are as follows:

Section M.20, Functions is amended as follows:

The functional statements for the Center for Mental Health Services (MS), Office of the Director (MS–1), and the Division of State and Community Systems Development (MSE) are replaced with the following:

Center for Mental Health Services (MS)

Office of the Director (MS–1)

(1) Provides leadership in planning, implementing, and evaluating the Center's goals, priorities, policies, and programs, including equal employment opportunity, and is the focal point for

the Department's efforts in mental health services; (2) plans, directs, and provides overall administration of the programs of CMHS; (3) conducts and coordinates Center interagency, interdepartmental, intergovernmental, and international activities; (4) provides information to the public and constituent organizations on CMHS programs; (5) maintains liaison with national organizations, other Federal departments/agencies, the National Institute of Mental Health and with other SAMSHA Centers; (6) administers committee management and reports clearance activities; (7) conducts consumer affairs activities; and (8) monitors the conduct of equal employment opportunity activities of CMHS.

Division of State and Community Systems Development (MSE)

(1) Administers the Community Mental Health Services Block Grant, including monitoring State implementation of the Mental Health State Plan, compliance with the provisions of the Public Health Service Act, as amended, regarding use of the payments and maintenance of effort; (2) provides technical assistance to the States with respect to the planning, development, financing, and operation of programs or services carried out pursuant to the block grant program; (3) administers a program of State human resource development; (4) plans and supports programs of mental health education, with emphasis on targeted populations; (5) plans and supports programs to provide protection and advocacy services for persons with severe mental disorders; and (6) supports programs for: (a) Obtaining, analyzing, and disseminating national statistics on mental health services, (b) developing methodologies for data collection in biometry and mental health economics; (c) organization and financing activities, and (d) consulting with and providing technical assistance to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data.

Delegations of Authority

All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect pending further redelegations, providing they are consistent with the reorganization.

These organizational changes are effective:

Dated: July 5, 2006.

Eric B. Broderick,

Acting Deputy Administrator, Assistant Surgeon General.

[FR Doc. 06–6272 Filed 7–17–05; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Registered Traveler Pilot (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by September 18, 2006.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address, or by telephone (571) 227–1995 or facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0019; Registered Traveler Pilot (RT) Pilot Program; Satisfaction and Effectiveness Measurement Data Collection Instruments. TSA is expanding the scope of the Registered Traveler (RT) Pilot Program, which is currently in operations at one airport and is already approved by OMB, to test and evaluate specific technologies and business processes related to the RT concept. In addition, TSA will add additional locations using the RT Pilot Program's public/private partnership. For the purpose of continuing metrics analysis, testing interoperability of systems, and testing the private/public model of operations, TSA sought emergency processing from OMB in order to begin collecting information in June 2006. OMB issued its temporary approval on June 12, 2006, and TSA is now seeking to renew the RT Pilot Program's control number.

TSA will receive and retain personal information on individuals who volunteer to participate in the program that Sponsoring Entities (*i.e.*, airport authorities and/or aircraft operators under agreement with TSA to conduct RT operations) will collect and transmit through a Central Information Management System (CIMS), which will be under contract with TSA. This information will allow TSA to complete and adjudicate name-based security threat assessments and allow Sponsoring Entities to issue an RT card to approved applicants.

In addition, TSA will administer two instruments, which OMB previously approved, to measure the satisfaction of RT pilot participants and key stakeholders. TSA will administer the first instrument, customer service surveys, electronically via the TSA Web site. TSA estimates the hour burden for the surveys to be 72,000 hours, based on 288,000 respondents and a 15-minute burden per respondent. The second instrument, stakeholder interviews, will be used by TSA to periodically conduct in person interviews to ensure that stakeholders' issues are fully addressed and to facilitate accurate assessments of local concerns. Stakeholders include representatives of participating airports, air carriers, vendor staff, and relevant associations, as well as Federal Security Directors and their staff. TSA estimates the hour burden for the stakeholder interviews to be 120 hours, based on 6–8 interviews per location (not including

TSA employees) and a 45-minute burden per interview.

Finally, in order for TSA to further develop the Registered Traveler Pilot Program, it is seeking to expand the information collection to include two additional categories of respondents: (1) Companies wishing to serve as Service Providers (*i.e.*, companies procured by the Sponsoring Entities to implement RT services); and (2) Airport authorities and aircraft operators wishing to participate in Registered Traveler.

Companies Wishing To Serve as Service Providers

If a company wishes to serve as a Service Provider for the Registered Traveler Pilot Program, it will have to undergo a process to confirm that it is a legitimate business that does not pose or is suspected of posing a threat to transportation or national security.[1] TSA has determined that the most effective way to pre-qualify companies seeking participation in Registered Traveler is to collect basic financial information about the company and to conduct security threat assessments (including fingerprint-based criminal history records check) on the company's (including its subcontractors) key personnel.[2] TSA estimates that up to 12 companies will wish to serve as an enrollment and/or verification provider and will need to provide information for the process. These 12 companies will have to submit general information (organization, legal, and ownership) about themselves so that TSA may conduct a security threat assessment to confirm that they do not pose, or are not suspected of posing, a threat to transportation or national security. TSA estimates that each company will take up to 12 hours to provide TSA with this information. Therefore, TSA estimates that the total hour burden for providing this general company information to be 144 hours [12 companies × 12 hours per company].

TSA will also collect personally identifying information about company key personnel (such as name, contact information, and date of birth) in order to conduct security threat assessments, including a fingerprint-based criminal history records checks. TSA estimates that this information will be collected for a maximum of 25 individuals per company and that providing this information will take about three hours per person. Therefore, TSA estimates that the maximum total hour burden for providing information on company officers and key personnel to be 900 hours [300 individuals (12 companies × 25 individuals per company) × 3 hours per individual].

Thus, TSA estimates the total hour burden for the company re-qualification process to be 1,044 hours [144 hours for general company information + 900 hours for information on company officers and key personnel].

Airport and Air Carrier Participation Approval

If an airport authority or aircraft operator wishes to participate in the Registered Traveler Pilot Program, TSA will require it to submit a Statement of Interest. TSA estimates that up to 50 entities will apply to participate and that it will take each airport one hour to prepare and submit its Statement of Interest. Therefore, TSA estimates the total burden hour for each entity seeking to participate in Registered Traveler to be 50 hours [50 airports × 1 hour per airport/air carrier].

TSA is currently proceeding with RT pilots at approximately 10–20 airports. TSA requires potential Sponsoring Entities seeking to participate in Registered Traveler to submit a Plan of Operations, including a Validation and Verification Report, which demonstrates how the potential Sponsoring Entities' operations comply with TSA-issued Registered Traveler standards. TSA estimates that approximately 20 potential Sponsoring Entities will submit a Plan of Operations and that it will take each entity 40 hours to prepare the Plan. Therefore, TSA estimates the total hour burden for entities submitting a Plan of Operations to be 800 hours [20 entities × 40 hours per airport].

Thus, TSA estimates the total hour burden for the participation approval process to be approximately 850 hours [50 hours for preparation and submittal of a Statement of Interest (50 airports/air carriers × 1 hour per airport/air carrier) + 800 hours for preparation and submittal of a Plan of Operations (20 airports/air carriers × 40 hours per airport/air carrier].

TSA estimates that expanding the Registered Traveler Pilot Program's information collection to include companies wishing to serve as service providers and airports wishing to participate will add a maximum of $2,400,000 to the cost burden. In order to prepare the Plan of Operations, airports will likely require the services of a certified public accountant to complete the Validation and Verification Report for their vendors. TSA estimates that it will cost about $200,000 per company and that between 6 and 12 vendor companies will participate in Registered Traveler. Built into this $200,000 figure is the cost per company to conduct a CHRC, which TSA estimates to be $750.00 ($30.00 per individual CHRC × 12 individuals per company). Therefore, TSA estimates a total burden cost ranging between $1,200,000 [for 6 companies ($200,000 per company × 6 companies)] and $2,400,000 [for 12 companies ($200,000 × 12 companies)].

Issued in Arlington, Virginia, on July 12, 2006.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. E6–11346 Filed 7–17–06; 8:45 am]

BILLING CODE 9110–05–P

[1] An RT Service Provider can be: (1) An Enrollment Provider (EP) thatcollects the biographic and biometric information from RT applicants, collects user fees from RT applicants, and issues RT cards to RT participants; (2) a Verification Provider (VP) that verifies the identity of the RT participant in the airport in accordance with TSA-issued RT standards; or (3) a combined Enrollment and Verification Provider. The term ''Service Provider'' is used in this document as a term of collective reference to RT vendors of all three categories.

[2] Key personnel are defined as: (1) Officers, principals, and programmanagers responsible for RT operations; and (2) all employees that collect, handle or use RT applicant or participant data.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–48]

Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information to analyze and reduce rents to market and restructure mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

DATES: *Comments Due Date:* August 17, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0533) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market).

OMB Approval Number: 2502–0533.

Form Numbers: HUD–9624, HUD–9625.

Description of the Need for the Information and its Proposed Use: Information to analyze and reduce rents to market and restructure mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	104	6		1.06		663

Total Estimated Burden Hours: 663.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 12, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–11361 Filed 7–17–06; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–533]

In the Matter of Certain Rubber Antidegradants, Components Thereof, and Products Containing Same; Final Commission Determination Regarding Violation; Issuance of Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') by two respondents and issuance of a limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the public version of the Commission's opinion and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 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://www.usitc.gov/secretary/edis.htm.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this section 337 investigation on March 29, 2005, based on a complaint filed by Flexsys America LP (''Flexsys''). 70 FR 15885 (March 29, 2005). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rubber antidegradants, components thereof, and products containing same that infringe claims 30 and 61 of U.S. Patent No. 5,117,063 (''the '063 patent''), claims 7 and 11 of U.S. Patent No. 5,608,111 (''the '111 patent''), and claims 1, 32, and 40 of U.S. Patent No. 6,140,538 (''the '538 patent''). The complaint and notice of investigation named five respondents. The investigation was subsequently terminated as to two respondents and as to the '538 patent.

On February 17, 2006, the ALJ issued his final ID finding a violation of section 337 by respondents Sinorgchem Co., Shandong, (''Sinorgchem'') and Sovereign Chemical Company (''Sovereign''), but finding no violation of section 337 by respondent Korea Kumho Petrochemical Co., Ltd. (''KKPC''). The ALJ recommended that the Commission issue limited exclusion orders, but did not recommend that any bond be imposed for importations during the Presidential review period. All parties petitioned for review of various parts of the final ID.

On April 13, 2006, the Commission issued notice that it had determined to review the final ID in its entirety and received review submissions from all the parties, including submissions on remedy, public interest, and bonding. The Commission also received submissions from three non-parties. Respondent KKPC moved to strike these three submissions as well as Attachment 1 to Flexsys' initial review submission. KKPC also moved for leave to file a reply to Flexsys' response to its motion to strike.

Having examined the relevant portions of the record in this investigation, including the ALJ's initial and recommended determinations, the written submissions on the issues on review and on remedy, public interest, and bonding, and the replies thereto, the Commission determined (1) That there is a violation of section 337 by Sinorgchem and Sovereign, but no violation by KKPC; (2) to not reach the licensing and estoppel defenses raised by KKPC; (3) that the appropriate remedy for the violation by Sinorgchem and Sovereign is a limited exclusion order; and (4) to deny as moot KKPC's motion to strike and its motion for leave to file a reply.

The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned remedial order and that no bond should be set for importation during the Presidential review period. The Commission's remedial order was delivered to the United States Trade Representative on the date of its issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, and sections 210.41–51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.41–51.

By order of the Commission.

Issued: July 13, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–11364 Filed 7–17–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0084]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 93, pages 28050–28051 on May 15, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 6NIA (5330.3D). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: none. Abstract: This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 15,000 respondents, who will complete the form within approximately 30 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 7,500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 11, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–11310 Filed 7–17–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 18, 2006.

This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Colleen Davis, Chief, Industry Records Branch, National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. The form is used by licensees to report all transactions in which an unlicensed person has acquired two or more pistols and/or revolvers at one time or during five consecutive business days.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 12 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,000 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 11, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–11311 Filed 7–17–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 12, pages 3120–3121 on January 19, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic 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: Voluntary Magazine Questionnaire For Agencies/Entities Who Store Explosive Materials.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local, or Tribal Government. Other: None. Abstract: The information from the questionnaires will be used to identify the number and locations of public explosives storage facilities including those facilities used by State and local law enforcement. The information will also help ATF account for all explosive materials during emergency situations, such as the recent hurricanes in the Gulf, forest fires, or other disasters.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 1,000 respondents, who will complete the questionnaire within approximately 30 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 500 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 12, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–11363 Filed 7–17–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 6–06]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, July 27, 2006, at 10 a.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

David E. Bradley,

Chief Counsel.

[FR Doc. 06–6311 Filed 7–14–06; 11:14 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Provider Enrollment Form (OWCP–1168). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 18, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, et seq., the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 et seq., the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 et seq., and the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq. These statutes require OWCP to pay for medical services provided to beneficiaries. In order for OWCP's billing contractor to pay providers of these services with its automated bill processing system, providers must ''enroll'' with one or more of the OWCP programs that administer the statutes by submitting certain profile information, including identifying information, tax I.D. information, and whether they possess specialty or sub-specialty training. Form OWCP–1168 is used to obtain this information from each provider. If this information is not obtained before the provider submits his or her first bill, the bill payment process is prolonged and increases the burden on providers. This information collection is currently approved for use through March 31, 2007.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out a wide range of automated medical bill ''edits'', such as, the identification of duplicate billings, the application of pertinent fee schedules that apply to the programs, utilization review, and fraud and abuse detection. This information is also used to furnish timely and detailed reports to providers on the status of previously submitted bills.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Provider Enrollment Form.

OMB Number: 1215–0137.

Agency Number: OWCP–1168.

Affected Public: Business or other for-profit.

Total Respondents: 48,242.

Total Responses: 48,242.

Time per Response: 8 minutes.

Frequency: On Occasion.

Estimated Total Burden Hours: 6,416.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $20,262.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 12, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–11401 Filed 7–17–06; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 1, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1–136–05–5, 7 items, 7 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to track, disseminate information about, and bill for cotton samples submitted to the agency for quality classification. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Agriculture, Agricultural Marketing Service (N1–136–06–9, 6 items, 6 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to disseminate market information about livestock, fruits, and vegetables. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Agriculture, Agricultural Marketing Service (N1–136–06–12, 3 items, 3 temporary items). Master files and electronic mail and word processing copies of documents associated with an electronic information system used to disseminate market data on farm products for all commodity programs. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–05–4, 2 items, 2 temporary items). Records relating to property accountability, including property books, receipts, turn-in slips, report of survey, and inventory adjustments reports. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–06–3, 2 items, 2 temporary items). Records documenting personnel attendance in initial and refresher chemical agents and munitions training. Also included are electronic copies of records created using electronic mail and word processing.

This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Defense, Defense Intelligence Agency (N1–373–05–02, 2 items, 1 temporary item). Records of the Office of Inspector General documenting requests for workforce assistance. Included are such records as reports, records of actions taken, and supporting documentation. Proposed for permanent retention are recordkeeping copies of files pertaining to oversight of intelligence operations.

7. Department of Defense, National Reconnaissance Office (N1–525–06–3, 2 items, 2 temporary items). Supervisors' personnel files including position descriptions, authorizations, and duplicate official personnel file documentation.

8. Department of Housing and Urban Development, Agency-wide (N1–207–06–3, 7 items, 7 temporary items). Financial management records relating to accounting activities, budget and finance, payments, collections and receivables, asset and liability management, reporting information, and documentation. Records result from financial events such as the receipt of appropriations or other financial resources, acquisition of goods or services, payments or collections, recognition of guarantees, benefits to be provided, and other reportable financial activities. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of the Interior, Office of the Secretary (N1–48–06–5, 30 items, 29 temporary items). Records of the Chief Information Officer relating to the Metric Conversion Act of 1975, as well as electronic information technology accessibility files and quality of government information files. Included are such records as program directives, guidance, policy files, reports, and committee and training files. Also included are electronic copies of records created using electronic mail and word processing applications. Proposed for permanent retention are recordkeeping copies of the annual information quality report.

10. Department of the Interior, Office of the Secretary (N1–48–06–6, 7 items, 7 temporary items). Records of the Indirect Cost Services Office of the National Business Center including customer guidance files, negotiated agreement files, and agency Web versions of guidance on how to prepare and submit indirect cost proposals. Also included are electronic copies of records created using electronic mail and word processing applications.

11. Department of Justice, Criminal Division (N1–60–06–3, 4 items, 2 temporary items). General files of the Counterterrorism Section that lack historical value. Also included are electronic copies of records created using electronic and word processing. Proposed for permanent retention are recordkeeping copies of counterterrorism case files, executive orders and presidential proclamations, definitions and interpretations, and policies and procedures.

12. Department of Justice, Justice Management Division (N1–60–06–5, 11 items, 11 temporary items). Records relating to the management, operations, and content of the public Web site. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of Justice, Federal Bureau of Investigation (N1–65–06–2, 35 items, 34 temporary items). Records of the Terrorist Screening Center including inputs, outputs, master files, documentation, and backups associated with electronic information systems used to identify and consolidate information about known or suspected terrorists. Also included are data quality control records, telephone call management records, procedures, project records, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of annual reports of encounters with known or suspected terrorists.

14. Department of Justice, Federal Bureau of Investigation (N1–65–06–8, 4 items, 2 temporary items). Inputs and outputs associated with an electronic information system used to document hostage and barricade situations. Proposed for permanent retention are the master files and system documentation.

15. Department of State, Bureau of Intelligence and Research (N1–59–06–6, 12 items, 4 temporary items). Records of the director that are routine in nature and audio-visual records relating to focus group project files and other qualitative research projects of the Office of Research. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of substantive subject files of the director, hardcopy and electronic versions of research reports and media reaction studies, research data collection survey project files, contract studies files, and hardcopy records relating to non-survey project files.

16. Department of the Treasury, Internal Revenue Service (N1–58–06–8, 10 items, 10 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to collect and track employee evaluative data and organizational performance goals.

17. Central Intelligence Agency, Agency-wide (N1–263–06–1, 6 items, 2 temporary items). Files relating to intelligence operations including duplicate electronic records pre-dating January 3, 1994, and post-September 1999 paper records converted to images and made part of the agency electronic recordkeeping system. Proposed for permanent retention are all pre-November 1999 recordkeeping paper files, electronic records dating from January 3, 1994, and post-September 1999 paper records not converted to the agency electronic recordkeeping system.

18. Environmental Protection Agency, Office of Chief Financial Officer, (N1–412–06–22, 6 items, 6 temporary items). Records relating to travel including authorizations, travel advance applications, transportation requests, vouchers, reimbursement claims, and other expense receipts and related documents in electronic form, as well as documentation not processed electronically.

Dated: July 13, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E6–11347 Filed 7–17–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Opera (application review): August 1–2, 2006 in Room 714. This meeting, from 9 a.m. to 6 p.m. on August 1st and from 9 a.m. to 5:30 p.m. on August 2nd, will be closed.

Opera (application review): August 3, 2006 in Room 716. A portion of this meeting, from 1 p.m. to 2:30 p.m., will be open to the public for a roundtable discussion, ''40 Years of NEA Support

to the Field of Opera.'' The remainder of this meeting, from 9 a.m.–1 p.m. and from 2:30 p.m.–5 p.m., will be closed.

Museums (application review): August 1–4, 2006 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on August 1st–3rd and from 9 a.m. to 3 p.m. on August 4th, will be closed.

Theater (application review): August 1–4, 2006 in Room 730. This meeting, from 9 a.m. to 5 p.m. on August 1st–3rd and from 9 a.m. to 3 p.m. on August 4th, will be closed.

Literature (application review): August 9–11, 2006 in Room 714. A portion of this meeting, from 12 p.m.–1 p.m. on August 11th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on August 9th–10th, from 9 a.m. to 12 p.m. and from 1 p.m. to 4:30 p.m. on August 11th, will be closed.

AccessAbility (application review): August 28, 2006. This meeting, which will be held by teleconference from 2 p.m.–3 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 12, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–11301 Filed 7–17–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Availability of Finding of No Significant Impact for a Marine Geophysical Survey in the Arctic Ocean

AGENCY: National Science Foundation.

ACTION: Notice of availability of a Finding of No Significant Impact for proposed activities in the Arctic Ocean.

SUMMARY: The National Science Foundation gives notice of the availability of a Finding of No Significant Impact for proposed activities in the Arctic Ocean.

The Office of Polar Programs (OPP) has prepared an Environmental Assessment of a marine geophysical study by the Coast Guard cutter *Healy* in the western Canada Basin, Chukchi Borderland and Mendeleev Ridge, July–August–September 2006. Given the United States Arctic Program's mission to support polar research, the proposed action is expected to result in substantial benefits to science.

ADDRESSES: Copies of the Finding of No Significant Impact and the Environmental Assessment are available upon request from: Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033.

SUPPLEMENTARY INFORMATION: The National Science Foundation prepared a draft Environmental Impact Assessment (EA) for a marine geophysical survey in the western Canada Basin, Chukchi Borderland and Mendeleev Ridge and solicited public comments (**Federal Register**: March 8, 2006, Vol. 71, No. 45, Page 11681). The National Science Foundation has prepared a Finding of No Significant Impact (FONSI) based on this EA, in accordance with CEQ regulations § 1500–1508 and 45 CFR part 640. It was determined that the proposed activity would not result in a significant impact on the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, a FONSI was issued, and no environmental impact statement is required.

Copies of the FONSI and the Environmental Assessment entitled, Environmental Assessment of a Marine Geophysical Survey by the USCG *Healy* of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July–August 2006, are available upon request from: Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033.

Polly A. Penhale,

Environmental Officer, Office of Polar Programs, National Science Foundation.

[FR Doc. 06–6274 Filed 7–17–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Meeting; Sunshine Act

TIME AND DATE: 9:30 a.m., July 25, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7755A, *Marine Accident Report*—Capsizing and Sinking of the New York State-Certificated Vessel Ethan Allen at Lake George, New York, on October 2, 2005.

NEWS MEDIA CONTACT: Terry Williams, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, July 21, 2006.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 14, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–6349 Filed 7–14–06; 2:25 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75 issued to PSEG Nuclear LLC (the licensee) for operation of the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, located in Salem County, New Jersey.

The proposed amendments would revise the Salem Technical Specifications (TSs) to eliminate certain Surveillance Requirements (SRs) for containment isolation valves. The proposed changes are to delete SR 4.6.3.1.1 and SR 4.6.3.1 for Salem Unit Nos. 1 and 2, respectively. These SRs require a complete valve stroke and stroke time measurement when a valve is returned to service after maintenance, repair, or replacement work. The proposed changes are intended to minimize unnecessary testing and plant transients. Other Salem TS containment isolation valve SRs will ensure that the valves remain operable.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), section 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; (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. 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 amendment would revise the Technical Specification (TS) Surveillance Requirements (SRs) for containment isolation valves, consistent with NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.'' SRs are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment specified in the Limiting Conditions for Operation is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. By performing the analysis, valve operability is maintained. This equipment will continue to be tested in a manner and at a frequency to give confidence that the equipment can perform its intended safety function. As a result, the proposed SR changes do not significantly affect the consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or radiological 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 create the possibility of a new or different kind of accident from any accident previously evaluated in the Updated Final Safety Analysis Report. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, and no significant changes in operations are being introduced (only certain post-maintenance testing is eliminated leaving operation functions unchanged).

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 will not alter any assumptions, initial conditions, or results of any accident analyses. The proposed changes do not affect the operational limits or the physical design of the containment isolation valves. The containment isolation valves will remain capable of performing their design function. Unnecessary testing and associated plant transients will be minimized by the proposed changes. 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.

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.

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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible from the Agencywide Documents Access and Management System (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 by the above date, 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 identify 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 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 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 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, 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.

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(c)(1)(i)–(viii).

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 Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 26, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1F21, 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*. 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, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of July 2006.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Senior Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11319 Filed 7–17–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 97 to Renewed Facility Operating License No. DPR–18, issued to R.E. Ginna Nuclear Power Plant, LLC (the licensee), which revised the License and Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York. The amendment is effective as of the date of issuance.

The amendment modified the License and Technical Specifications to authorize an increase in the licensed rated thermal power by 16.8 percent from 1520 megawatts thermal (MWt) to 1775 MWt. This level of power increase is considered an extended power uprate.

The application for the 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.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on September 22, 2005 (70 FR 55633). No

request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (71 FR 37614).

For further details with respect to the action, see (1) the application for amendment dated July 7, 2005, as supplemented by letters dated August 15, September 30, and December 6, 9, and 22, 2005, and January 11 and 25, February 16, March 3 and 24, and May 9 and 19, 2006, (2) Amendment No. 97 to License No. DPR–18, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21,11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room 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 11th day of July 2006.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager,Plant Licensing Branch I–1, Division of Operating Reactor Licensing,Office of Nuclear Reactor Regulation.

[FR Doc. E6–11320 Filed 7–17–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

DATES: Weeks of July 17, 24, 31, August 7, 14, 21, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 17, 2006

There are no meetings scheduled for the Week of July 17, 2006.

Week of July 24, 2006—Tentative

Wednesday, July 26, 2006

1:50 p.m. Affirmation Session (Public Meeting) (Tentative).

a. *Pa'ina Hawaii, LLC,* unpublished April 27, 2006 Memorandum and Order (accepting the intervenor's and NRC Staff's Joint Stipulation regarding two admitted environmental contentions) (Tentative).

b. *David Geisen,* LBP–06–13 (May 19, 2006) (Tentative).

c. *Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP), *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP) (Tentative).

d. *Florida Power & Light Co., et al.,* Docket Nos. 50–250–LT, *et al.,* International Brotherhood of Electrical Workers' ''Petition to File Motion to Intervene and Protest Out-of-Time'' and ''Motion for Hearing and Right to Intervene and Protest'' (Tentative).

Thursday, July 27, 2006

9:30 a.m. Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Equal Employment Opportunity (EEO) Programs. (Public Meeting) (Contact: Barbara Williams, 301–415–7388).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 31, 2006—Tentative

There are no meetings scheduled for the Week of July 31, 2006.

Week of August 7, 2006—Tentative

There are no meetings scheduled for the Week of August 7, 2006.

Week of August 14, 2006—Tentative

There are no meetings scheduled for the Week of August 14, 2006.

Week of August 21, 2006—Tentative

There are no meetings scheduled for the Week of August 21, 2006.

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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.

* * * * *

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.

* * * * *

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: July 13, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–6302 Filed 7–14–06; 9:59 am]

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 June 23, 2006 to July 6, 2006. The last biweekly notice was published on July 5, 2006 (71 FR 38180).

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. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: May 15, 2006.

Description of amendment request: The amendment would revise the Technical Specification (TS) requirements related to steam generator tube integrity. The proposed changes are generally consistent with Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.'' The availability of this TS improvement was announced in the **Federal Register**, on May 6, 2005 (70 FR 24126) as part of the consolidated line item improvement process (CLIIP). The proposed amendment includes changes to licensing pages to delete License Condition 2.c.(8), ''Repaired Steam Generators;'' changes to TS 3.1.6, ''LEAKAGE;'' changes to TS Section 3.1.1.2, ''Steam Generators and Steam Generator (SG) Tube Integrity;'' revising TS Section 4.19, ''Steam Generator (SG) Tube Integrity;'' adding new TS 6.9.6, ''Steam Generator Tube Inspection Report;'' and adding new TS 6.19, ''Steam Generator (SG) Program.''

Basis for proposed no significant hazards consideration determination (NSHC): The NRC staff published 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 NSHC determination, using the CLIIP. 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 May 15, 2006. 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 Main Steam Line 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 TSs identifies 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 TSs. The program, defined by NEI [Nuclear Energy Institute] 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 the primary-to-secondary leak rate after the accident is 1 gallon per minute with no more than 500 gallons per day in any one SG, 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 change does 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 TSs.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Darrell J. Roberts.

Duke Power Company LLC, 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: June 1, 2006.

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report (UFSAR) to incorporate the use of a fiber-reinforced polymer (FRP) system to strengthen existing masonry walls against tornado effects.

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.

Response: Physical protection from a tornado event is a design basis criterion rather than a requirement of a previously analyzed UFSAR accident analysis.

The current licensing basis (CLB) for Oconee states that systems, structures, and components (SSC's) required to shut down and maintain the units in a shutdown condition will not fail as a result of damage caused by natural phenomena.

The in-fill masonry walls to be strengthened using an FRP system are passive, non-structural elements. The use of an FRP system on existing Auxiliary Building masonry walls will allow them to resist uniform pressure loads resulting from a tornado and will not adversely affect the structure's ability to withstand other design basis events such as earthquakes or fires. Therefore, the proposed use of FRP on existing masonry walls will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: The final state of the FRP system is passive in nature and will not initiate or cause an accident. More generally, this understanding supports the conclusion that the potential for new or different kinds of accidents is not created.

3. Involve a significant reduction in a margin of safety.

Response: The application of an FRP system to existing auxiliary building masonry walls will either act to restore the margin of safety described in the UFSAR, *e.g.*, the Unit 3 Control Room north wall, or enhance the margin of safety, *e.g.*, the West Penetration Room walls, by increasing the walls' ability to resist tornado-induced differential pressure and/or tornado wind. Consequently, 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: 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.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: May 22, 2006.

Description of amendment request: The proposed license amendment request would revise: (1) Surveillance Requirement (SR) 3.8.1.11 to remove the MODE restriction from Note 2 for Diesel Generator (DG)–3 only, (2) SR 3.8.1.12 to remove the MODE restriction from Note 2 for DG–3 only, (3) SR 3.8.1.16 to remove the MODE restriction from the Note for DG–3 only, and (4) Revise SR 3.8.1.19 to remove the MODE restriction from Note 2 for DG–3 only.

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 operation of Columbia Generating Station in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The DG and its associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment. The design of plant equipment is not being modified by these proposed changes. The capability of DG–1 and DG–2 to supply power to their safety related buses as designed will not be compromised by permitting performance of DG–3 testing during power operations. Columbia's Technical Specifications require the RCIC [reactor core isolation cooling] system to be operable whenever this testing is performed at power. This ensures that the high-pressure injection function is maintained during the time the HPCS injection valve is disabled

during testing. In the event of a design basis accident during testing, the HPCS [high-pressure core spray] system could be returned to service well within the 14-day outage time allowed by Technical Specifications. Additionally, the ability of the Standby Liquid Coolant (SLC) system to perform its design safety function would not be affected because SLC is connected downstream of the HPCS injection valve. Therefore, there would be no significant impact on any accident consequences.

Based on the above, the proposed change to permit certain DG surveillance tests to be performed during plant operation will have no effect on accident probabilities or consequences. Therefore, the proposed change does not involve a significant Increase in the probability or consequences of an accident previously evaluated.

2. Does the operation of Columbia Generating Station in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident causal mechanisms would be introduced as a result of NRC approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Based on the above, implementation of the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the operation of Columbia Generating Station in accordance with the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the DG do not affect the operability requirements for the DG, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DG to perform its required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment. In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this, and the above basis, no safety margins will be impacted.

Energy Northwest concludes that there is no 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: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: April 24, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) consistent with the NRC-approved Revision 4 to TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

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 April 24, 2006. 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 [Steam Generator] 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[n] SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a[n] 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 MSLB [main steamline break], 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[s] to the TS[s] 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[s]. The program, defined by NEI [Nuclear Energy Institute] 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 with no more than [500 gallons per day or 720 gallons per day] in any one SG, 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.

Based upon the reasoning presented above 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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Michael L. Marshall, Jr.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 25, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) consistent with the NRC-approved Revision 4 to TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

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 May 25, 2006.

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 [Steam Generator] 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[n] SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a[n] 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 MSLB [main steamline break], 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[s] to the TS[s] 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[s]. The program, defined by NEI [Nuclear Energy Institute] 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 with no more than [500 gallons per day or 720 gallons per day] in any one SG, 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.

Based upon the reasoning presented above 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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Michael L. Marshall, Jr.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 27, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) consistent with the NRC-approved Revision 4 to TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

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 April 27, 2006.

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 [Steam Generator] 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[n] SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a[n] 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 MSLB [main steamline break], 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[s] to the TS[s] 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[s]. The program, defined by NEI [Nuclear Energy Institute] 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 with no more than [500 gallons per day or 720 gallons per day] in any one SG, 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.

Based upon the reasoning presented above 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: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Michael L. Marshall, Jr.

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: January 18, 2006.

Description of amendment request: The proposed amendment would delete the reference to the hydrogen monitors in Technical Specification (TS) 3.6.11, ''Accident Monitoring Instrumentation'' consistent with the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of availability of ''Model Application Concerning Technical Specification Improvement To Eliminate Hydrogen Recombiner Requirement, and Relax the Hydrogen and Oxygen Monitor Requirements for Light Water Reactors Using the Consolidated Line Item Improvement Process (CLIIP)'', in the **Federal Register** on September 25, 2003 (68 FR 55416). The notice included a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model application.

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, by confirming the applicability of the model NSHC determination to NMP–1 and incorporating it by reference in its application. The model NSHC determination 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 revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen [and oxygen] monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen [and oxygen] monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. [Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.]

The regulatory requirements for the hydrogen [and oxygen] monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2] and removal of the hydrogen [and oxygen] monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that

this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI [Three Mile Island], Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

[Category 2 oxygen monitors are adequate to verify the status of an inerted containment.]

Therefore, this change does not involve a significant reduction in [a] margin of safety. [The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors.] Removal of hydrogen [and oxygen] monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the model NSHC determination and its applicability to NMP–1. Based on this review, 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.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 6, 2006.

Description of amendment request: The proposed amendments would revise the design basis as described in the Point Beach Nuclear Plant Final Safety Analysis Report (FSAR) by incorporating an updated analysis for satisfying the reactor vessel Charpy upper-shelf energy requirements of 10 CFR part 50, Appendix G, Section IV.A.1.

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 the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

The proposed change incorporates the updated analysis for satisfying the reactor vessel Charpy upper-shelf energy requirements of 10 CFR part 50, Appendix G, Section IV.A.1 into the FSAR. The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does 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 change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with safety analysis assumptions and resultant consequences. Therefore, it is concluded that this change does not significantly increase the probability of occurrence of an accident previously evaluated.

2. Would the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change incorporates the updated analysis for satisfying the reactor vessel Charpy upper-shelf energy requirements of 10 CFR part 50, Appendix G, Section IV.A.1 into the FSAR. The change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would the proposed amendment result in a significant reduction in a margin of safety?

The proposed change incorporates the updated analysis for satisfying the reactor vessel Charpy upper-shelf energy requirements of 10 CFR part 50, Appendix G, Section IV.A.1 into the FSAR. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The setpoints at which protective actions are initiated are not altered by the proposed change. Therefore, the proposed amendment does not result in 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: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 30, 2006.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station, Unit 1 (FCS) Technical Specification (TS) requirements related to steam generator tube integrity. The change is consistent with NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–449, ''Steam Generator Tube Integrity.'' The availability of this TS improvement was announced in the **Federal Register** on May 6, 2005 (70 FR 24126) as part of the consolidated line item improvement process (CLIIP).

Omaha Public Power District (OPPD) also proposes to change the FCS TS by deleting the sleeving repair alternative to plugging for steam generator tubes. The FCS replacement steam generators (RSGs) to be installed during the fall of 2006 are manufactured by Mitsubishi Heavy Industries, Ltd. (MHI). The change is being requested because OPPD has determined that the sleeving repair alternative to plugging will not be used for the MHI RSGs.

Basis for proposed no significant hazards consideration determination: OPPD stated that it had reviewed the proposed no significant hazards consideration determination published on March 2, 2005 (70 FR 10298), as part of the CLIIP. OPPD has concluded that the proposed determination presented in the notice is applicable to FCS and the determination is incorporated by reference to satisfy the requirements of 10 CFR 50.91(a). 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 elimination from the TS surveillance requirements of leak tight sleeves as a repair method alternative to plugging defective steam generator tubes does not introduce an initiator to any previously evaluated accident. The frequency or periodicity of performance of the remaining surveillance requirements for steam generator tubes (including plugged tubes) is not affected by this change. Elimination of the tube repair method has no effect on the consequences of any previously evaluated accident. The

proposed changes will not prevent safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of any 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 only affects the TS surveillance requirements. The proposed change is a result of installation of RSGs. The proposed change will eliminate a steam generator tube repair alternative which cannot be utilized or credited for the RSGs. This change will not alter assumptions made in the safety analysis and licensing bases and will not create new or different systems interactions.

Therefore, this 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 proposed change deletes surveillance requirements for a steam generator tube repair alternative which will no longer be necessary or applicable. The remaining TS steam generator tube surveillance requirements, including inspection and plugging requirements, will continue to maintain the applicable margin of safety.

Therefore, this TS change 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: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: May 30, 2006.

Description of amendment requests: The proposed amendment would revise the Technical Specifications (TSs) 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 3.4.13, ''RCS [Reactor Coolant System] Operational Leakage,'' TS 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' TS 5.6.10, ''Steam Generator (SG) Tube Inspection Report,'' and adds TS 3.4.17, ''Steam Generator (SG) Tube Integrity.'' 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 May 30, 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 an 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 an 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 are 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 with no more than [500 gallons per day or 720 gallons per day] in any one SG, 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 an 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 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 amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 1, 2006.

Description of amendment request: The proposed amendment would eliminate the requirement for a power range, neutron flux, high negative rate trip and delete the references to this trip as functional Unit 4 in Salem Generating Station (Salem) Unit Nos. 1 and 2 Technical Specification (TS) Table 2.2–1, ''Reactor Trip System Instrumentation Trip Setpoints,'' TS Table 3.3–1, ''Reactor Trip System Instrumentation,'' TS Table 3.3–2, ''Reactor Trip System Instrumentation Response Times,'' and TS Table 4.3–1, ''Reactor Trip System Instrumentation Surveillance Requirements [SRs].'' The proposed changes are consistent with the methodology presented in the Westinghouse Topical Report WCAP–11394–P–A, ''Methodology for the Analysis of the Dropped Rod Event,'' which has been reviewed by the NRC and found acceptable for referencing in license applications. The amendment also would involve the correction of errata in the TS for Salem Unit Nos. 1 and 2.

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 elimination of the Power Range, Neutron Flux, Negative Rate trip does not increase the probability or consequences of reactor core damage accidents resulting from Rod Cluster Control Assembly (RCCA) Misalignment events previously analyzed. The safety functions of other safety-related systems and components have not been altered. All other Reactor Trip System protection functions are not impacted by the elimination of the requirement for a Power Range, Neutron Flux, High Negative Rate trip. The Power Range, Neutron Flux, High Negative Rate trip circuitry detects and responds to negative reactivity insertion due to RCCA misoperation events, should they occur. Therefore, the Power Range, Neutron Flux, High Negative Rate trip is not assumed in the initiation of such events. The consequences of accidents previously evaluated in the Salem Generating Station (Salem) Updated Final Safety Analysis Report (UFSAR) are unaffected by the proposed changes because no change to any equipment response or accident mitigation scenario has resulted. The proposed changes do not modify the RCCAs or change the acceptance criteria for departure from nucleate boiling (DNB). The TS change reflects analysis described in the UFSAR and cycle-specific analysis performed each fuel cycle.

The proposed revisions to Salem Unit 1 Index page XII, Salem Unit 1 TS 4.2.2.2, Salem Unit 2 TS 4.2.2.2, Salem Unit 1 TS Table 3.3–2, Salem Unit 2 SR number for boron concentration on page 3/4 9-1, Salem Unit 1 TS 6.9.1.5.a, and Salem Unit 1 TS 6.9.1.5.b contain changes administrative in nature that correct errors and do not affect the intent of any TS requirements.

Therefore, the proposed changes do not involve a significant increase in the probability or radiological 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 elimination of the Power Range, Neutron Flux, High Negative Rate trip does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The proposed changes do not challenge the performance or integrity of the RCCAs or any other safety-related system. The proposed changes will have no adverse effect on the availability, operability, or performance of the safety-related systems and components assumed to actuate in the event of a design basis accident (DBA) or transient. It has been demonstrated that the Power Range, Neutron Flux, High Negative Rate trip can be eliminated by the NRC approved methodology described in WCAP–11394–P. The Salem fuel cycle specific analyses have confirmed that for a dropped RCCA event, no direct reactor trip or automatic power reduction is required to meet the DNB limits for this Condition II, ''Fault of Moderate Frequency,'' event. The Power Range, Neutron Flux, High Negative Rate trip is not credited either as a primary or backup mitigation feature for any other UFSAR event.

The proposed revisions to Salem Unit 1 Index page XII, Salem Unit 1 TS 4.2.2.2, Salem Unit 2 TS 4.2.2.2, Salem Unit 1 TS Table 3.3–2, Salem Unit 2 SR number for boron concentration on page 3/4 9-1, Salem Unit 1 TS 6.9.1.5.a, and Salem Unit 1 TS 6.9.1.5.b contain changes administrative in nature that correct errors and do not affect the intent of any TS requirements.

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 margin of safety is the difference between the DNB acceptance limit and the failure of the fuel rod cladding. The Salem fuel cycle specific analyses have confirmed that for a dropped RCCA event, DNB limits are not exceeded with the proposed changes. Conformance to the licensing basis acceptance criteria for DBAs and transients with the elimination of the Power Range, Neutron Flux, High Negative Rate trip is demonstrated and the DNB limits are not exceeded when the NRC approved methodology of WCAP–11394–P is applied. The margin of safety associated with the licensing basis acceptance criteria for any postulated accident is unchanged.

The proposed revisions to Salem Unit 1 Index page XII, Salem Unit 1 TS 4.2.2.2, Salem Unit 2 TS 4.2.2.2, Salem Unit 1 TS Table 3.3–2, Salem Unit 2 SR number for boron concentration on page 3/4 9-1, Salem Unit 1 TS 6.9.1.5.a, and Salem Unit 1 TS 6.9.1.5.b contain changes administrative in nature that correct errors and do not affect the intent of any TS requirements.

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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Darrell J. Roberts.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 1, 2006.

Description of amendment request: The amendment would move the main steamline discharge (safety valves and atmospheric dumps) radiation monitors (R46) from the radiation monitoring instrumentation Technical Specification (TS) 3.3.3.1, to the accident monitoring TS 3.3.3.7. The purpose of the R46 monitors is to provide continuous monitoring of high-level, post-accident releases of radioactive noble gases; therefore, relocation to TS 3.3.3.7 is appropriate. In addition, TS definition 1.31, ''Source Checks,'' would be modified to allow different methods to comply with the source check requirement. This change would affect the remaining instruments in TS 3.3.3.1, and would allow for appropriate testing consistent with the technology of the existing detectors, and replacement detectors in the future.

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 to the R46 monitors presents no change in the probability or the consequence of an accident, since the monitors are used post-accident for the monitoring of high-level releases of radioactive noble gases.

Relocation of the R46 monitors to the accident monitoring TS 3.3.3.7 is appropriate for the function of the monitors. The R46 monitors are designed to meet the requirements of NUREG–0737 II.F.1 and the intent of RG [Regulatory Guide] 1.97. The monitor's alarm function is used in the EOPs [Emergency Operating Procedures] to identify a Steam Generator Tube Rupture (SGTR) event EOP entry point and to identify which SG [steam generator] has ruptured. The relocation of the monitor to TS 3.3.3.7 has no affect on the function of the monitor.

The proposed change to the definition of TS 1.31 also does not impact the accident analyses in any manner. The qualitative assessment of monitor response will continue to be performed verifying monitor operability.

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 relocation of the R46 monitors is primarily administrative in nature; there will be no change in the function of the monitors. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. Post accident monitoring instrumentation is not associated with the initiation of an accident.

The proposed change to the definition of TS 1.31 also does not create a new or different kind of accident. The qualitative assessment of monitor response will continue to be performed verifying monitor operability.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change to relocate the R46 monitors does not alter the manner in which safety limits, limiting safety systems settings or limiting conditions for operation are determined. The proposed change will not alter any assumptions, initial conditions or results specified in any accident analysis. There is no change in the R46 monitor alarm setpoint.

The proposed change to the TS definition of SOURCE CHECK does not alter the basic requirement that a qualitative assessment of the monitor response be performed; therefore the operability of the monitor will continue to be verified.

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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Darrell J. Roberts.

PSEG Nuclear LLC, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: April 6, 2006.

Description of the amendment request: The proposed amendment changes the existing steam generator (SG) tube surveillance program to one that is consistent with the program proposed by the Technical Specification Task Force (TSTF) in TSTF–449. These changes revise Technical Specification (TS) 1.15, ''Identified Leakage,'' TS 1.21, ''Pressure Boundary Leakage,'' TS 3/4.4.6, ''Steam Generator (SG) Tube Integrity,'' and TS 3/4.4.7.2, ''Operational Leakage,'' and add new administrative TS 6.8.4.i, ''Steam Generator (SG) Program,'' and TS 6.9.1.10, ''Steam Generator Tube Inspection Report.'' Other editorial changes were also made.

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 requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cool down 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.

The structural integrity performance criterion is:

All in-service steam generator tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cool down and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a safety factor of 3.0 against burst under normal steady state full power operation primary-to-secondary pressure differential and a safety factor of 1.4 against burst applied to the design basis accident primary-to-secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design basis accidents, or combination of accidents in accordance with the design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

The accident induced leakage performance criterion is:

The primary-to-secondary accident induced leakage rate for any design basis accidents, other than a SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. Leakage is not to exceed 1 gpm [gallon per minute] per SG.

The operational leakage performance criterion is:

The reactor coolant system operational primary-to-secondary leakage through any

one SG shall be limited to 150 gallons per day.

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 an 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 main steam line 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 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 retained 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 as part of these TS changes 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 Steam Generator Program required by the proposed addition of TS 6.8.4.i. The program defined by NEI [Nuclear Energy Institute] 97–06 includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

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 Salem TS 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 with no more than 500 gallons per day through any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change that allows SR [Surveillance Requirement] 4.4.7.2.1.d to not be performed until 12 hours after establishment of steady state operation is consistent with NUREG 1431, ''Standard Technical Specifications, Westinghouse Plants'', and ensures the surveillance requirement is appropriate for the LCO [Limiting Condition for Operation].

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 TS 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 TS.

Therefore, the proposed changes do not affect the consequences of an SGTR accident and the probability of such an accident is reduced.

In addition, the proposed changes do not affect the probabilities or consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event.

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 performance based requirements are an improvement over the requirements imposed by the current TS.

Implementation of the proposed Steam Generator 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 Steam Generator 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 changes do 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.

The proposed change that allows SR 4.4.7.2.1.d to not be performed until 12 hours after establishment of steady state operation is consistent with NUREG 1431, ''Standard Technical Specifications, Westinghouse Plants'', and ensures the surveillance requirement is appropriate for the LCO.

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?

Response: No.

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 also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a 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 Steam Generator Program to manage SG tube inspection, assessment, repair and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TS.

The proposed change that allows SR 4.4.7.2.1.d to not be performed until 12 hours after establishment of steady state operation is consistent with NUREG 1431, ''Standard Technical Specifications, Westinghouse Plants'', and ensures the surveillance requirement is appropriate for the LCO.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed changes to the TS.

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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Darrell J. Roberts.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: June 2, 2006.

Description of amendment requests: The amendment proposes to revise Technical Specification (TS) 3.8.1, ''AC [alternating current] Sources—Operating,'' and TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to increase the required amount of stored diesel fuel oil to support a change to Ultra Low Sulfur Diesel fuel from California diesel fuel presently in use. This change in the type of fuel oil is mandated by California air pollution control regulations.

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.

This proposed change increases the minimum amount of stored diesel fuel. The change supports the use of Ultra Low Sulfur Diesel (ULSD) fuel rather than the existing California Air Resources Board diesel fuel as mandated by California air pollution control regulations (Title 13 California Code of

Regulations Division 3, Chapter 5, Article 2, Sections 2280–2285).

Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' requires that each diesel generator have sufficient fuel to operate for a period of 7 days, while the diesel generator (DG) is supplying maximum post Loss of Coolant Accident (LOCA) load demand.

Because the Lower Heating Value (LHV) per gallon of ULSD fuel is less than that of existing diesel fuel, it was necessary to re-calculate the amount of fuel required to supply necessary loads for the required time periods. For Modes 1 through 4, the resulting minimum volumes of ULSD fuel are 48,400 gallons and 41,800 gallons for the 7-day and 6-day fuel supply, respectively. For Modes 5 and 6, the required volumes of ULSD fuel are 43,600 gallons and 37,400 gallons for a 7-day supply and a 6-day supply, respectively.

The DGs and the associated support systems such as the fuel oil storage and transfer systems are designed to mitigate accidents and are not accident initiators. Increasing the minimum volumes of stored fuel in the storage and day tanks will not result in a significant increase in the probability of any accident previously evaluated.

Following implementation of this proposed change, there will be no change in the ability of the diesel generators to supply maximum post-LOCA load demand for 7 days. The proposed minimum volumes of fuel, 48,400 gallons and 41,800 gallons, ensure that a 7-day and [a] 6-day supply of fuel, respectively, are available in Modes 1 through 4. The proposed minimum volumes of fuel, 43,600 gallons and 37,400 gallons, ensure that a 7-day and a 6-day supply, respectively, of fuel is available in Modes 5 and 6. This is identical to the current requirements, except for the increased volume of fuel required due to the decreased heat content of the ULSD fuel. Therefore, this change will not result in a significant increase in the consequences of any accident previously evaluated.

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.

Following this change, the diesel generators will still be able to supply maximum post-LOCA load demand. The current 7-day and 6-day fuel supply requirements will be maintained following this change. The new required fuel oil volumes are within the capacities of the fuel oil storage tanks.

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Bases to TS 3.8.3 state that ''[e]ach diesel generator (DG) is provided with a storage tank having a fuel oil capacity sufficient to operate that diesel for a period of 7 days, while the DG is supplying maximum post loss of coolant accident load demand.'' When the fuel oil tank level is less than required to support the 7-day of operation, the required action depends on whether or not a 6-day supply of fuel is available.

The proposed tank level limits will maintain these 7-day and 6-day fuel supply requirements in all operating Modes following changeout to ULSD fuel.

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.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: May 25, 2006.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–372, ''Addition of LCO [Limiting Condition for Operation] 3.0.8, Inoperability of Snubbers.'' The amendment would add (1) a new LCO 3.0.8 addressing when one or more required snubbers are unable to perform their associated support function(s) (*i.e.*, the snubber is inoperable) and (2) a reference to LCO 3.0.8 in LCO 3.0.1 on when LCOs shall be met.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible license amendments adopting TSTF–372 using the NRC's consolidated line item improvement process (CLIIP) for amending licensee's TSs, which included a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252), which included the resolution of public comments on the model SE. The May 4, 2005, notice of availability referenced the November 24, 2004, notice. The licensee has affirmed the applicability of the following NSHC determination in its application.

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—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering [a] supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—Does the proposed change involve a significant reduction in the margin of safety?

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following

the three-tiered approach recommended in [NRC] RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk [, which is required by the proposed TS 3.0.8]. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: May 25, 2006.

Description of amendment request: The amendment would revise Technical Specifications 3.1.7, ''Rod Position Indication,'' 3.2.1, ''Heat Flux Hot Channel Factor ($F^C_Q(Z)$) (FQ Methodology),'' 3.2.4, ''Quadrant Power Tilt Ratio (QPTR),'' and 3.3.1, ''Reactor Trip System (RTS) Instrumentation.'' The proposed changes are to allow use of the Westinghouse proprietary computer code, the Best Estimate Analyzer for Core Operations—Nuclear (BEACON). The new BEACON power distribution monitoring system (PDMS) would augment the functional capability of the neutron flux mapping system for the purposes of power distribution surveillances at the Callaway Plant. Certain required actions, for when a limiting condition for operation is not met, and certain surveillance requirements are being changed to refer to power distribution measurements or measurement information of the core.

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 PDMS performs continuous core power distribution monitoring with data input from existing plant instrumentation. This system utilizes an NRC-approved Westinghouse proprietary computer code, *i.e.*, Best Estimate Analyzer for Core Operations μ Nuclear (BEACON), to provide data reduction for incore flux maps, core parameter analysis, load follow operation simulation, and core predication. The PDMS does not provide any protection or control system function. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Final Safety Analysis Report (FSAR) [for the Callaway Plant].

Use of the PDMS supports maintaining the core power distribution within required limits. Further continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.*, earlier determination of an adverse condition developing) for operation action prior to having an adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do[es] the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Other than use of the PDMS to monitor core power distribution, implementation of the PDMS and associated Technical Specification changes has no impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation [other than core power distribution monitoring] will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with [the] implementation of the PDMS do not result in a change to the design basis of any plant component or system [other than to the PDMS]. The evaluation of the effects of using the PDMS to monitor core power distribution parameters shows that all design standards and applicable safety criteria limits are met. [The PDMS is to monitor the core power distribution and is, therefore, not an accident initiator.]

The proposed changes do not result in any event previously deemed incredible being made credible [by the implementation of the PDMS]. Implementation of the PDMS will not result in any additional adverse condition and will not result in any increase in the challenges to safety systems. The cycle-specific variables required by the PDMS are calculated using NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits, and appropriate actions will continue to be [required to be] taken when or if limits are exceeded.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do[es] the proposed change involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is adversely affected by the implementation of the PDMS. The margins of safety provided by [the] current Technical Specification requirements and limits remain unchanged, as the Technical Specifications will continue to require operation within the core limits that are based on NRC-approved reload design methodologies. [These NRC-approved reload design methodologies are not being changed.] Appropriate measures exist to control the values of these cycle-specific limits, and appropriate actions will continue to be specified and [required to be] taken for when limits are violated. Such actions remain unchanged.

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: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 2, 2006.

Description of amendment request: The amendment would revise Surveillance Requirement 3.5.2.8 in the Technical Specifications by replacing the phrase ''trash racks and screens'' with the word ''strainers.'' The amendment reflects the replacement of the containment sump suction inlet trash racks and screens with a complex strainer design with significantly larger effective area in the upcoming Refueling Outage 15. This is in response to Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors,'' dated September 13, 2004.

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 consequences of accidents evaluated in the Updated Safety Analysis Report (USAR) [for the Wolf Creek Generating Station] that could be affected by the proposed change are those involving the pressurization of containment and associated flooding of the containment and recirculation of this fluid within the Emergency Core Cooling System (ECCS) or the Containment Spray System (CSS) (*e.g.*, Loss of Coolant Accidents). The proposed change does not impact the initiation or probability of occurrence of any accident. [The containment sump trash racks and screens, and the sump strainers that are replacing the trash racks and screens are not initiators of accidents.]

Although the configurations of the existing containment recirculation sump trash racks and screen[s,] and the replacement sump strainer assemblies are different, they serve the same fundamental purpose of passively removing debris from the sump's suction supply of the supported system pumps. Removal of trash racks does not impact the adequacy of the pump NPSH [net positive suction head] assumed in the safety analysis. Likewise, the change does not reduce the reliability of any supported systems or introduce any new system interactions. The greatly increased surface area of the new strainer is designed to reduce head loss [at the containment sump] and reduce the approach velocity at the strainer face significantly, decreasing the risk of impact from large debris entrained in the sump flow stream.

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 containment recirculation sump strainers are a passive system used for accident mitigation. As such, they cannot be accident initiators. Therefore, there is no possibility that this change could create any new or different kind of accident.

No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of the proposed change. There will be no adverse effect[s] or challenges imposed on any safety related system as a result of the change. Therefore, the possibility of a new or different type of accident is not created. [The containment recirculation sump suction inlet trash racks and screens are being replaced with a complex strainer design with significantly larger effective surface area to reduce head loss and reduce the approach velocity at the strainer face significantly, decreasing the risk of impact from large debris entrained in the sump flow stream.]

There are no changes which would cause the malfunction of safety related equipment, assumed to be OPERABLE in the accident analyses, as a result of the proposed Technical Specification change. No new equipment performance burdens are imposed. The possibility of a malfunction of safety related equipment with a different result [or consequences] is not created.

Therefore, the proposed 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 does not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The proposed change does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. The radiological dose consequence acceptance criteria listed in the Standard Review Plan [for accidents] will continue to be met.

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: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

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.*

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: March 9, 2005, as supplemented by letter dated July 7, 2005.

Brief description of amendments: The amendments revised the Millstone Power Station, Unit Nos. 2 and 3 Technical Specifications to incorporate wording related to the reactor coolant system, electrical power system and refueling operations to provide operational flexibility during mode changes or addition of coolant during shutdown operations.

Date of issuance: June 28, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 293 and 230.

Facility Operating License Nos. DPR–65 and NPF–49: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29788). The additional information provided in

the supplemental letter dated July 7, 2005, did not expand the scope of the application as noticed and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2006.

No significant hazards consideration comments received: No.

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 application of amendments: January 5, 2005, as supplemented November 21, 2005.

Brief description of amendments: The amendments revised Technical Specifications (TSs) 5.5.19.b, 5.1.19.c, and TS Surveillance Requirement (SR) 3.8.1.9 associated with the Lee Combustion Turbine (LCT) testing program. TS 5.5.19 required verification that an LCT can supply the equivalent of one unit's maximum safeguards loads, plus two units' Mode 3 loads when connected to the system grid every 12 months. The amendments clarified this requirement as ''Verify an LCT can supply equivalent of one unit's Loss of Coolant Accident (LOCA) loads plus two units' Loss of Offsite Power (LOOP) loads when connected to system grid every 12 months.'' TS 5.5.19.c and SR 3.8.1.9 were revised for consistency.

Date of Issuance: July 5, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 352/354/353.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 15, 2005 (70 FR 7764). The additional information provided in the supplemental letter dated November 21, 2005, did not expand the scope of the application as noticed and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 2006.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 29, 2005.

Brief description of amendment: The amendment deleted License Condition, Section 2.F, that requires the reporting of violations in Section 2.C of the Facility Operating License.

Date of issuance: June 28, 2006.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 116.

Facility Operating License No. NPF–69: Amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 25, 2006 (71 FR 23958).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: February 17, 2006.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) adding Limiting Condition for Operation (LCO) 3.0.8 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4).

Date of issuance: June 29, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 250/194.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** April 25, 2006 (71 FR 23960).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Unit Nos. 1 and 2, Burke County, Georgia

Date of application for amendments: February 17, 2006.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) adding Limiting Condition for Operation (LCO) 3.0.8 and renumbering existing LCO 3.0.8 to LCO 3.0.9 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4).

Date of issuance: June 29, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 141/121.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Licenses and the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 25, 2006 (71 FR 23960).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 19, 2005, as supplemented by letter dated March 30, 2006.

Brief description of amendments: The amendments modified several parts of Technical Specification Surveillance Requirement (SR) 4.0.5, both to change the surveillance intervals for which the 25 percent extension provided in SR 3.0.2 would apply, and to replace the references in SR 4.0.5 to the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code,* Section XI, with the ASME Operation and Maintenance Code.

Date of issuance: June 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 308 and 297.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in ***Federal Register:*** February 14, 2006 (71 FR 7183).

The supplemental letter dated March 30, 2006, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 2006.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: April 20, 2006, as supplemented on May 15, 2006.

Brief description of amendments: These amendments revised the reactor coolant pressure and temperature limits, low-temperature overpressure protection system (LTOPS) setpoint values, and LTOPS enable temperatures for up to 28.8 effective full-power years (EFPYs) and 29.4 EFPYs of operation at Surry Power Station, Unit Nos. 1 and 2, respectively.

Date of issuance: June 29, 2006.

Effective date: As of the date of issuance.

Amendment Nos.: 248/247.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 28, 2006 (71 FR 25249).

The May 15, 2006, supplement contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of July.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–6246 Filed 7–17–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 40174, July 14, 2006].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, July 18, 2006 at 10 a.m.

CHANGE IN THE MEETING: Time change.

The closed meeting scheduled for Tuesday, July 18, 2006 at 10 a.m. has been changed to Tuesday, July 18, 2006 at 11 a.m.

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: July 14, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6303 Filed 7–14–06; 10:52 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54136; File No. 4–517]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Order Granting Approval of Plan for Allocation of Regulatory Responsibilities Between The NASDAQ Stock Market LLC and the National Association of Securities Dealers, Inc.

July 12, 2006.

Notice is hereby given that the Securities and Exchange Commission (''SEC'' or ''Commission'') has issued an Order, pursuant to Sections 17(d) [1] and 11A(a)(3)(B) [2] of the Securities Exchange of 1934 (''Act''), granting approval and declaring effective a plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by The NASDAQ Stock Market LLC (''Nasdaq'') and the National Association of Securities Dealers, Inc. (''NASD'').

Accordingly, NASD shall assume, in addition to the regulatory responsibility it has under the Act, the regulatory responsibilities allocated to it under the plan. At the same time, Nasdaq is relieved of those regulatory responsibilities allocated to NASD.[4]

I. Introduction

Section 19(g)(1) of the Act,[5] among other things, requires every national securities exchange and registered securities association (''SRO'') to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) of the Act.[6] Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication for those broker-dealers that maintain memberships in more than one SRO.[7] With respect to common members of two or more SROs, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1[8] and Rule 17d–2 under the Act.[9] Rule 17d–2 under the Act permits SROs to propose joint plans allocating regulatory responsibilities, other than financial responsibility rules, with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Upon effectiveness of a plan filed pursuant to Rule 17d–2, any self-regulatory organization is relieved of those regulatory responsibilities for common members that are allocated by the plan to another self-regulatory organization.

On April 17, 2006, the Commission published notice of the filing by Nasdaq and NASD of a joint plan allocating regulatory responsibility for common members.[10] No comments were received. On July 12, 2006, Nasdaq and NASD filed an amended joint plan for

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] On January 13, 2006, the Commission approved Nasdaq's application for registration as a national securities exchange. The Commission conditioned the operation of the Nasdaq Exchange upon satisfaction of several requirements, one of which was the approval by the Commission of an agreement pursuant to Rule 17d–2 between Nasdaq and NASD. Securities Exchange Act Release No. 53128, 71 FR 3550 (January 23, 2006). Commission approval of this plan allocating regulatory responsibility satisfies this requirement.

[5] 15 U.S.C. 78s(g)(1).

[6] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

[7] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[8] 17 CFR 240.17d–1. Rule 17d–1 authorizes the Commission to designate a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with financial responsibility requirements imposed by the Act, the rules thereunder, and SRO rules.

[9] 17 CFR 240.17d–2.

[10] Securities Exchange Act Release No. 53628 (April 10, 2006), 71 FR 19763.

allocating regulatory responsibility.[11] The plan, as amended, is intended to reduce regulatory duplication for firms that are common members of Nasdaq and NASD. Included in the plan is an attachment (''The Nasdaq Stock Market LLC Rules Certification for 17d–2 Agreement with NASD'' referred to herein as the ''Nasdaq Certification'') that clearly delineates regulatory responsibilities with respect to specified Nasdaq rules and specified federal securities laws. The Nasdaq Certification lists every Nasdaq rule that is identical or substantially similar to a NASD rule for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. The Nasdaq Certification also includes the federal securities laws for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members.

II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act and Rule 17d–2(c)[12] in that the proposed plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among self-regulatory organizations, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed plan could reduce unnecessary regulatory duplication by allocating to the NASD certain responsibilities for common members that would otherwise be performed by both Nasdaq and NASD. The proposed plan promotes efficiency by reducing costs to common members. Furthermore, because Nasdaq and NASD will coordinate their regulatory functions in accordance with the plan, the plan should promote investor protection.

The Commission notes that Nasdaq and NASD have allocated regulatory responsibility for all Nasdaq rules that are identical or substantially similar to NASD rules, as set forth in the Nasdaq Certification.[13] According to the plan, Nasdaq and NASD will undergo an annual review of the Nasdaq Certification to add Nasdaq rules that are identical or substantially similar to NASD rules; delete Nasdaq rules that are no longer identical or substantially similar to NASD rules; and confirm that the remaining rules on the Nasdaq Certification continue to be Nasdaq rules that are identical or substantially similar to NASD rules. The Commission today is declaring effective and approving a plan that allocates regulatory responsibility to NASD for the oversight and enforcement of all Nasdaq rules that are identical or substantially similar to the rules of the NASD for common members of Nasdaq and NASD. Therefore, modifications to the Nasdaq Certification need not be filed with the Commission as an amendment to the plan provided that the parties are only adding to, deleting from or confirming changes to Nasdaq rules in the Nasdaq Certification that are identical or substantially similar to NASD rules. However, should Nasdaq or NASD decide to add a Nasdaq rule to the Nasdaq Certification that is not identical or substantially similar to an NASD rule, or delete a Nasdaq rule from the Nasdaq Certification that is identical or substantially similar to an NASD rule, or leave on the Nasdaq Certification a Nasdaq rule that is no longer identical or substantially similar to an NASD rule, such a change would be an amendment to the plan which must be filed with the Commission pursuant to Rule 17d–2 under the Act.

Nasdaq and NASD have also set forth the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, NASD will bear responsibility for examining, and enforcing compliance by, common members. The Commission notes that any changes to this list of federal securities laws, and the rules and regulations thereunder, would be an amendment to the plan between Nasdaq and NASD and therefore must be filed with the Commission pursuant to Rule 17d–2 under the Act.

The plan further provides that NASD shall not assume regulatory responsibility, and Nasdaq will retain full responsibility, for surveillance and enforcement of trading activities or practices solely involving Nasdaq's own marketplace.

The plan also permits Nasdaq and NASD to terminate the plan for various reasons, including the non-payment of fees, for cause, and for convenience. The Commission notes, however, that while the plan permits the parties to terminate the plan, the allocation to NASD of the regulatory responsibilities set forth in the plan cannot be reallocated by the parties themselves under the terms of the plan. Rule 17d–2 requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission pursuant to Rule 17d–2.

III. Conclusion

This Order gives effect to the plan filed with the Commission in File No. 4–517. The parties to the plan shall notify all members affected by the plan of their rights and obligations under the plan.

It is therefore ordered, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the plan, in File No. 4–517, between Nasdaq and NASD filed pursuant to Rule 17d–2 is approved and declared effective.

It is therefore ordered that Nasdaq is relieved of those responsibilities allocated to NASD under the plan in File No. 4–517.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11327 Filed 7–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54131; File No. SR–Amex–2006–66]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Short Term Option Series Pilot Program

July 12, 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 July 10, 2006, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amex has designated this proposal as noncontroversial under

[11] Nasdaq and NASD made clarifying changes in the amended plan, and included a list of the federal securities laws, and the rules and regulations thereunder, in the Nasdaq Certification for which, under the plan, the NASD would bear responsibility for examining, and enforcing compliance by, common members. These changes are non-substantive, and therefore the Commission is not seeking comment on the amended joint plan.

[12] 15 U.S.C. 78q(d) and 17 CFR 240.17d–2(c).

[13] Nasdaq has represented that there are no Nasdaq rules that are identical or substantially similar to NASD rules that are not included in the Nasdaq Certification. Telephone call between Jeffrey Davis, Nasdaq Office of General Counsel, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, on June 19, 2006.

[14] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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

The Exchange proposes to amend Amex Rules 903(h) and 903C(a)(v) to extend until July 12, 2007, its pilot program for listing and trading Short Term Option Series (''Pilot Program''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's principal office, 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 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.

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 extend the Pilot Program for an additional year, through July 12, 2007.[5] The Pilot Program allows Amex to list and trade Short Term Option Series, which expire one week after the date on which a series is opened. Under the Pilot Program, Amex may select up to five approved options classes on which Short Term Option Series could be opened.[6] A series could be opened on any Friday that is a business day and would expire on the next Friday that is a business day. If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday. Short Term Option Series would be P.M.-settled, except for Short Term Option Series on indexes, which would be A.M.-settled.

For each class selected for the Pilot Program, the Exchange usually would open five Short Term Option Series in that class for each expiration date. The strike price of each Short Term Option Series would be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. Amex would not open a Short Term Option Series in the same week that the corresponding monthly options series is expiring, because the monthly options series in its last week before expiration is functionally equivalent to the Short Term Option Series. The intervals between strike prices on a Short Term Option Series would be the same as the intervals between strike prices on the corresponding monthly options series.

The Exchange believes that Short Term Option Series can provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. While the Exchange has not listed any Short Term Option Series during the first year of the Pilot Program, there has been significant investor interest in trading short-term options at the Chicago Board Options Exchange (''CBOE'').[7] To have the ability to respond to potential customer interest, and to remain competitive, the Exchange proposes the continuation of the Pilot Program.

In the original proposal to establish the Pilot Program, the Exchange stated that if it were to propose an extension, expansion, or permanent approval of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect.[8] Since the Exchange did not list any One Week Options Series during the first year of the Pilot Program, there is no data available to compile such a report at this time. Therefore the Exchange did not submit a report with its proposal to extend the Pilot Program.

2. Statutory Basis

The Exchange believes that Short Term Option Series could stimulate customer interest in options and provide a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5) of the Act [10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission approved the Pilot Program on July 12, 2005. *See* Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR–Amex–2005–035). Under Amex Rules 903(h) and 903C(a)(v), the Pilot Program is scheduled to expire on July 12, 2006.

[6] A Short Term Option Series could be opened in any options class that satisfied the applicable listing criteria under Amex rules (*i.e.*, stock options, options on exchange traded funds as defined under Commentary .06 of Amex Rule 915, or options on indexes). The Exchange could also list and trade Short Term Option Series on any options class that is selected by another exchange that employs a similar pilot program.

[7] CBOE filed a report with the Commission on June 13, 2006, stating that CBOE has listed Short Term Options Series in four different options classes. *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (extending CBOE's Short Term Option Series pilot program).

[8] *See* Form 19b–4 for File No. SR–Amex–2005–035, filed March 23, 2005.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the benefits of the Pilot Program to continue without interruption.[14] Therefore, the Commission designates that the proposal will become operative on July 12, 2006.[15]

[13] Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Commission has determined to waive the five-day pre-filing requirement for this proposal.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] As set forth in the Exchange's original filing proposing the Pilot Program, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of Amex, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how Amex addressed such problems; (5) any complaints that Amex received during the operation of the Pilot Program and how Amex addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least 60 days prior to the expiration date of the Pilot Program. *See* Form 19b–4 for File No. SR–Amex–2005–035, filed March 23, 2005.

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 No. SR–Amex–2006–66 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–Amex–2006–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–66 and should be submitted on or before August 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11326 Filed 7–17–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54134; File No. SR–NASD–2005–079]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendments Nos. 1, 2 and 3 to Proposed Rule Change To Revise Rule 10322 of the NASD Code of Arbitration Procedure Which Pertains to Subpoenas and the Power To Direct Appearances

July 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2006, May 12, 2006, and July 7, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendments Nos. 1, 2, and 3, respectively, to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NASD. On June 17, 2005, the NASD filed with the Commission the proposed rule change. On July 13, 2005, the Commission published for comment the proposed rule change in the **Federal Register**.[3] NASD filed Amendments Nos. 1, 2, and 3 to respond to the comments received, after the publication of the proposed rule change in the **Federal Register**, and to make revisions to the rule change as described herein.[4] The Commission is

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR40411 (July 13, 2005).

[4] Amendment No. 1 addresses comment letters received by the Commission in response to the publication of the proposed rule change in the **Federal Register** (for initial notice of proposed rule change see Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR 40411 (July 13, 2005)) and proposes certain amendments in response to these comments, including requiring that all subpoenas be issued by an arbitrator. Amendment No. 2 revises the regulation text and certain sections of the rule filing in order to clarify the process for issuing a subpoena to both parties and non-parties. Amendment No. 3 revises Amendment No. 2 to

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

NASD is proposing to revise Rule 10322 of the NASD Code of Arbitration Procedure (''Code''), which pertains to subpoenas and the power to direct appearances. Below is the text of the proposed rule change.[5] Proposed new language is *Italic* and proposed deletions are in brackets.

* * * * *

10322. Subpoenas and Power to Direct Appearances

(a) [**Subpoenas**]

To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. [The] [a]*A*rbitrators [and any counsel of record to the proceeding] shall have the [power of the subpoena process as provided by law. All parties shall be given a copy of a subpoena upon its issuance. Parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.] *authority to issue subpoenas for the production of documents or the appearance of witnesses.*

(b) A party may make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party. The motion must include a draft subpoena and must be filed with the Director, with an additional copy for the arbitrator. The requesting party must serve the motion and draft subpoena on each other party, at the same time and in the same manner as on the Director. The requesting party may not serve the motion or draft subpoena on a non-party.

(c) If a party receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the subpoena may respond to the objections. The arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the subpoena regardless of whether any objections are made.

(d) If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the subpoena.

(e) Any party that receives documents in response to a subpoena served on a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents shall be responsible for the reasonable costs associated with the production of the copies.

[**(b) Power to Direct Appearances and Production of Documents**]

(f) [The] *An* arbitrator[(s)] shall be empowered without resort to the subpoena process to direct the appearance of any person employed *by* or associated with any member of the Association and/or the production of any records in the possession or control of such persons or members. Unless [the] *an* arbitrator[(s)] directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.

* * * * *

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 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 III 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

Proposal

As described in the original rule filing, NASD proposed to revise Rule 10322 of the Code to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for pre-hearing discovery. In addition, NASD proposed clarifying the requirements regarding the service of subpoenas by specifying that a party that issues a subpoena must serve a copy of the subpoena to all parties and the entity receiving the subpoena on the same day.

NASD is amending the proposal set forth in the original rule filing to allow only arbitrators to issue subpoenas for both parties and non-parties, whether for discovery or for the appearance at a hearing before the arbitrators. In addition, NASD is proposing to require a party to provide notice to all other parties that it has received documents in response to a non-party subpoena and to provide copies of those documents at the request of another party. NASD is also clarifying that, in most cases, a public arbitrator will rule on all motions requesting a subpoena. Lastly, NASD is proposing some minor changes to the original proposal, including rewriting certain portions of the rule text in plain English.

Comments on the Proposed Rule Change

The Commission received 12 comment letters in response to the publication of the proposed rule in the **Federal Register**.[6] NASD's response to the issues raised in these letters is set forth below.

Several commenters to NASD's proposal stated that only arbitrators should have the authority to issue subpoenas in arbitration.[7] Some of these commenters believed that this limitation should apply only to discovery subpoenas while other commenters suggested that it apply to all subpoenas. In support of their position, a number of these commenters noted that the Federal

clarify current practice for deciding discovery-related motions.

[5] The rules proposed in this filing will be renumbered as appropriatefollowing Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; *see* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158); and the NASD Code of Arbitration Procedure for Industry Disputes; *see* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[6] Comment letters (''Comment Letters'') were submittedby Richard Skora, dated July 12, 2005 (''Skora Letter''); Seth E. Lipner, Deutsch & Lipner, dated July 13, 2005 (''Lipner Letter''); Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C., dated July 13, 2005 (''Buchwalter Letter''); Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated July 19, 2005 (''Caruso Letter''); Dennis M. Pape, dated July 20, 2005 (''Pape Letter''); Al Van Kampen, Rohde & Van Kampen PLLC, dated July 25, 2005 (''Van Kampen Letter''); Phil Cutler, Cutler Nylander & Hayton, dated August 1, 2005 (''Cutler Letter''); Avery B. Goodman, A.B. Goodman Law Firm, Ltd., dated August 1, 2005 and August 2, 2005 (''Goodman Letters''); Jill Gross, Director, Barbara Black, Director, and Richard Downey, Student Intern, Pace Investor Rights Project, dated August 2, 2005 (''Gross Letter''); Tim Canning, dated August 3, 2005 (''Canning Letter''); and Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, dated August 4, 2005 (''Shockman Letter'').

[7] *See* Lipner, Buchwalter, Van Kampen, Canning, and Shockman Letters.

Arbitration Act (''FAA'') provides only arbitrators, and not attorneys, with the authority to issue subpoenas.[8] Furthermore, one commenter noted that only arbitrators have the authority to issue subpoenas under the Uniform Arbitration Act and the Revised Uniform Arbitration Act.[9] Lastly, two commenters noted that, under the laws of several states, attorneys do not have the authority to issue subpoenas.[10]

NASD has determined that the proposed rule should be revised to allow only arbitrators to issue subpoenas to both parties and non-parties, whether for discovery or for the appearance at a hearing before the arbitrators, but for reasons other than those suggested by the commenters. NASD believes that providing arbitrators with greater control over the issuance of subpoenas will help to protect investors, associated persons, and other parties from abuse in the discovery process. In addition, the establishment of a uniform, nationwide rule will reduce potential confusion for parties and their counsel regarding whether they have the ability to issue subpoenas, minimize gamesmanship in the subpoena process, and make the rule easier to administer.

Under current practice, the arbitrator responsible for deciding discovery-related motions typically is the chairperson of the panel. Thus, except in certain intra-industry cases or unless the public customer agrees otherwise, the arbitrator ruling on a motion requesting a subpoena will be a public arbitrator.[11] In those situations where the chairperson is unable to rule promptly on the motion for a subpoena, another public arbitrator on the panel shall decide the motion except when the public customer agrees otherwise.[12] A non-public arbitrator will rule on a motion requesting a subpoena only in those intra-industry cases where the panel is composed exclusively of non-public arbitrators or where the public customer agrees otherwise.[13] Additionally, the arbitrator responsible for deciding discovery-related motions may elect to refer any discovery-related issue to the full panel.[14] NASD has proposed to codify the current practice described above in the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes [15] and the NASD Code of Arbitration Procedure for Industry Disputes.[16]

One commenter who does not support the proposed rule change stated that arbitrators should be required to give written explanations of all discovery decisions.[17] In addition, this commenter indicated that NASD should enforce current Rule 10322 with respect to the requirement that parties produce witnesses and present documents to the fullest extent possible without resort to the subpoena process.

NASD disagrees that arbitrators should be required to give written explanations of all discovery decisions, because such a requirement would significantly increase the time and costs associated with the discovery process. Furthermore, NASD believes that this issue is outside the scope of this rulemaking.[18] With respect to the commenter's assertion regarding the enforcement of Rule 10322, NASD does expect all parties to cooperate to the fullest extent possible without the use of subpoenas, and arbitrators may sanction parties for discovery abuse or make a disciplinary referral, as appropriate, at the end of the case if such cooperation is not provided.

One commenter suggested several changes to the proposed rule.[19] First, the commenter stated that the term ''fullest'' (which is in current Rule 10322) should be included in paragraph (a) of the proposed rule to ensure that parties do not avoid their discovery responsibilities in arbitration. Second, the commenter asserted that the proposal should specify that service of a subpoena must be made in precisely the same manner on everyone. Third, the commenter indicated that a party that receives documents in response to a non-party subpoena should be required to provide copies of the documents to opposing counsel within five calendar days of receipt of the documents.

NASD agrees with this commenter that the term ''fullest'' should be added in paragraph (a) of the rule to emphasize that, to the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. NASD also agrees that the method of service of a subpoena should be the same on all parties and the non-party receiving the subpoena and proposes to amend paragraph (d) of the rule to reflect this requirement. Lastly, NASD agrees that documents received in response to a non-party subpoena should be made available to other parties. NASD does not believe, however, that a party that receives documents in response to a non-party subpoena should be required automatically to provide copies to another party, which may have no interest in them or may not want to incur potentially significant copying costs. Therefore, NASD proposes to require a party to provide notice to all other parties that it has received documents in response to a non-party subpoena and to provide copies of those documents at the request of another party.[20] Once a party receives a request for copies of documents that were received in response to a non-party subpoena, that party will have ten calendar days to provide the copies to the requesting party. NASD believes that a ten calendar day time frame is more appropriate than the one suggested by the commenter because it will allow enough time to copy a potentially voluminous amount of records, and it is also a time frame that is frequently used in the proposed Code revision.

[8] There is a split of opinion among the federal appellate courts as towhether arbitrators may issue discovery subpoenas or only subpoenas for attendance or production of documents at a hearing. *Compare In re Matter of Arbitration Between Security Life Ins. Co. of America*, 228 F.3d 865, 870–871 (8th Cir. 2000) (''Although the efficient resolution of disputes through arbitration necessarily entails a limited discovery process, we believe this interest in efficiency is furthered by permitting a party to review and digest relevant documentary evidence prior to the arbitration hearing. We thus hold that implicit in an arbitration panel's power to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to the hearing.'') *with Hay Group, Inc.* v. *E.B.S. Acquisition Corp.*, 360 F.3d 404, 407 (3rd Cir. 2004) (''The power to require a non-party 'to bring' items 'with him' clearly applies only to situations in which the non-party accompanies the items to the arbitration proceeding, not to situations in which the items are simply sent or brought by a courier. In addition * * * a non-party may be compelled 'to bring' items 'with him' only when the non-party is summoned 'to attend before [the arbitrator] as a witness.' ''). Furthermore, while the Fourth Circuit, like the Third Circuit, found that the FAA does not grant an arbitrator the authority to subpoena a non-party for purposes of pre-hearing discovery, it did establish the possibility that a party might, ''under unusual circumstances,'' petition the district court to compel pre-arbitration discovery upon a showing of ''special need or hardship.'' *Comsat Corp.* v. *Nat'l Science Found.*, 190 F.3d 269 (4th Cir. 1999).

[9] *See* Lipner Letter.

[10] *See* Lipner Letter and Van Kampen Letter.

[11] *See* NASD Rules 10308(c)(5) and 10321(e).

[12] *See* NASD Rule 10321(e).

[13] *See* NASD Rule 10321(e).

[14] *See* NASD Rule 10321(e).

[15] *See* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158).

[16] *See* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[17] *See* Skora Letter.

[18] Telephone conversation between Jean I. Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (May 1, 2005).

[19] *See* Caruso Letter.

[20] A party would have five calendar days after the receipt ofsubpoenaed documents from a non-party to provide notice to all other parties.

One commenter who does not support the rule proposal indicated that it would, in effect, only impact member firms since customers rarely need documents from non-parties in arbitration.[21] In addition, this commenter expressed concern that arbitrators will not review subpoenas promptly.

NASD disagrees with this commenter. The proposed rule will apply equally to all parties that use NASD's forum. Even though broker-dealers may use non-party subpoenas more often than do customers or associated persons, the proposed rule will be applied to all parties equally, thereby ensuring that NASD's forum is fair for everyone. NASD does not believe that the proposal will significantly delay the discovery process, as arbitrators will receive training specifically addressing subpoenas in the event that the SEC approves the proposed rule change. Furthermore, parties that volunteer to use NASD's discovery arbitrator pilot program may recognize a further reduction in the time needed for the review of subpoenas, especially in complex cases that involve numerous subpoenas.

One commenter, who supports the proposal, raised an issue that was not addressed in the original rule filing.[22] This commenter stated that NASD should revise Rule 10322 to establish a witness fee for non-parties and to prevent employees of a party from being reimbursed by an opposing party for testifying.

NASD disagrees with this commenter because the reimbursement of witnesses for testifying at a hearing historically has not been a significant issue in NASD's forum. Consequently, NASD is only proposing non-substantive changes to the paragraph of the rule addressing costs involving the appearance of witnesses or the production of documents.

One commenter supports the rule, but indicates that parties should be given at least ten days to oppose the issuance of a subpoena.[23] This commenter also stated that a non-party subpoena should be issued only if the documents relate to the matter in controversy and are not available from the parties.

NASD notes that a provision giving ten days to object to the issuance of a subpoena is contained in the amended rule proposal. Arbitrators will use their discretion to determine whether to issue a subpoena, or whether to limit the scope of a subpoena before it is issued.

Lastly, NASD notes that some issues raised by several commenters, such as the issuance of a subpoena by an attorney before a panel has ruled on an objection to the subpoena, are not addressed herein as they became moot as a result of the revisions to the amended rule proposal discussed above.[24]

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's rules 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 will make the arbitration subpoena process more orderly and efficient, thereby improving the forum for all parties.

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 on the proposed changes in the initial rule filing were solicited by the Commission in response to the publication of SR–NASD–2005–079, which proposed to amend Rule 10322 of the NASD Code of Arbitration Procedure primarily to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for pre-hearing discovery.[25] The Commission received 12 comment letters in response to the **Federal Register** publication of SR–NASD–2005–079.[26] The comments are summarized above.

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, 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–NASD–2005–079 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–NASD–2005–079. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also 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 the File Number SR–NASD–2005–079 and should be submitted on or before August 8, 2006.

[21] *See* Pape Letter.

[22] *See* Goodman Letter.

[23] *See* Canning Letter.

[24] *See* Lipner, Caruso, Gross, Canning, and Shockman Letters.

[25] *See* Securities Exchange Act Release No. 51981, *supra* note 3.

[26] *See* Comment Letters, *supra* note 6.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11325 Filed 7–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54125; File No. SR–NYSE–2005–93]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Rule 431 (''Margin Requirements'') and Rule 726 (''Delivery of Options Disclosure Document and Prospectus'') To Expand the Products Eligible for Customer Portfolio Margining and Cross-Margining Pilot Program

July 11, 2006.

I. Introduction

On December 29, 2005, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to amend NYSE Rules 431 and 726 to expand the scope of products that are eligible for treatment as part of the Commission's approved portfolio margin pilot program (the ''Pilot'').[3] The NYSE seeks to expand the list of eligible products in the Pilot to include security futures contracts[4] and listed single stock options. The proposed rule change was published in the **Federal Register** on Monday, January 23, 2006.[5] The Commission received three comment letters in response to the **Federal Register** notice.[6]

The comment letters and the Exchange's responses to the comments[7] are summarized below. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

a. Summary of Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 431 to include listed security futures and listed single stock options as eligible products for customer portfolio margining under the Pilot.[8] The proposed rule change also includes amendments to NYSE Rule 726 to conform the required customer disclosure to the changes made in the proposed rule change, including the expansion of eligible products.

Section 7(a)[9] of the Exchange Act[10] empowers the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') to prescribe rules and regulations regarding credit that broker-dealers can extend to their customers on securities transactions. Pursuant to this authority, the Federal Reserve Board adopted Regulation T.[11] The Federal Reserve Board, in the 1998 amendments, removed from the scope of Regulation T transactions governed by a portfolio margin rule approved by the Commission.[12] The Commodity Futures Modernization Act of 2000 (''CFMA'') authorized the trading of futures on individual stocks and narrow-based stock indexes, *i.e.,* securities futures products.[13] Under the CFMA, the Federal Reserve Board has authority to either issue margin rules for securities futures or delegate joint authority to the Commission and the Commodity Futures Trading Commission (''CFTC'') to issue such rules. The Federal Reserve Board delegated authority to the Commission and CFTC, and in 2002 the Commission and the CFTC jointly issued margin requirements for securities futures products.[14] The jointly issued rules exempted from their scope transactions in securities futures products subject to SRO portfolio margin rules.[15]

NYSE Rule 431 prescribes specific margin requirements for customers based on the type of securities products held in their accounts. In April 1996, the Exchange established the Rule 431 Committee (the ''Committee'') to assess the adequacy of Rule 431 on an ongoing basis, review margin requirements and make recommendations for change. The Exchange's Board of Directors has approved a number of proposed amendments resulting from the Committee's recommendations since the Committee was established.[16] The NYSE noted in its rule proposal that the Committee endorsed the proposed rule change discussed below.

b. Portfolio Margining

Portfolio margining is a methodology for calculating a customer's margin requirement by ''shocking'' a portfolio of financial instruments at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. For example, the calculation points could be spread equidistantly along a range bounded on one end by a 15% increase in market value of the instrument and at the other end by a 15% decrease in market value. Gains and losses for each instrument in the portfolio are netted at

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19). On July 14, 2005, the Commission approved on a Pilot Basis expiring July 31, 2007, amendments to Exchange Rule 431 to permit the use of a prescribed risk-based margin requirement (''portfolio margin'') for certain specified products as an alternative to the strategy based margin requirements currently required in section (a) through (f) of the Rule. Amendments to Rule 726 were also approved to require disclosure to, and written acknowledgment from, customers in connection with the use of portfolio margin. *See also* NYSE Information Memo 05–56, dated August 18, 2005 for additional information.

[4] For purposes of the proposed rule change, term ''security futures'' utilizes the definition at section 3(a)(55) of the Exchange Act, excluding narrow-based security indexes.

[5] *See* Exchange Act Release No. 53126 (Jan. 13, 2006), 71 FR 3586 Jan. 23, 2006).

[6] *See* letter from Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006 (''SIA Letter''); letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006 (''FIA Letter''); and letter from Severino Renna, Director, Citigroup Global Markets, Inc., to Nancy M. Morris, Secretary, dated February 13, 2006 (''Citigroup Letter'').

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated June 2, 2006 (''NYSE Response'').

[8] The list of eligible products under the Pilot currently includes listedbroad-based securities index options, warrants, futures, futures options and related exchange-traded funds. The NYSE also has filed an additional rule change to, among other things, further expand the list of eligible products for the Pilot to include equities and unlisted derivatives. *See* Exchange Act Release No. 53577 (March 30, 2006), 71 FR 17536 (April 6, 2006) (SR–NYSE–2006–13); *see also* Exchange Act Release No. 53576 (March 30, 2006), 71 FR 17519 (April 6, 2006) (SR–CBOE–2006–14). The comment period for these proposed rule filings ended on May 11, 2006.

[9] 15 U.S.C. 78g.

[10] 15 U.S.C. 78a *et seq.*

[11] 12 CFR 220.1 *et seq.*

[12] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998).

[13] Public Law 106–554, 114 Stat. 2763 (2000).

[14] Exchange Act Release 46292 (August 1, 2002), 67 FR 53146 (August14, 2002).

[15] 17 CFR 242.400(c)(2).

[16] The Committee is composed of several member organizations,including Goldman, Sachs & Co., Morgan Stanley & Co., Inc., Merrill Lynch, Pierce, Fenner and Smith, Inc., Bear Stearns Corp. and Credit Suisse First Boston Corp. and several self-regulatory organizations, including: the NYSE, the Chicago Board Options Exchange, the Options Clearing Corporation (''OCC''), the American Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the National Association of Securities Dealers.

each calculation point along the range to derive a potential portfolio-wide gain or loss for the point. The margin requirement is the amount of the greatest portfolio-wide loss among the calculation points.

Under the Exchange's proposed rule, the range of products eligible for portfolio margining would be expanded from securities and futures based on broad-based U.S. securities indexes (*e.g.,* the S&P 500 or S&P 100) to include security futures products and listed single stock options. The gain or loss on each position in the portfolio is calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. Under the current rule, the range for non-high capitalization indexes is between a market increase of 10% and a decrease of 10%. The range for high capitalization indexes is between a market increase of 6% and a decrease of 8%.[17] The range for portfolios of securities futures products and single stock options under the proposed rule change would be a market increase of 15% and a decrease of 15% (*i.e.,* the valuation points would be ±3%, 6%, 9%, 12%, and 15%).[18] As with the current Pilot, a theoretical options pricing model would be used to derive position values at each valuation point for the purpose of determining the gain or loss.[19]

The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier. The second computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer in the event the greatest loss among the valuation points is *de minimis.*

Finally, under the proposed rule change, member organizations would need to notify and receive approval from the Exchange prior to establishing a portfolio margin program for eligible customers.

c. Margin Deficiency

The proposed amendments would require a member organization to deduct from its net capital the amount of any portfolio margin maintenance call not met by the close of business of trade date plus one day (T+1). This condition would be different from the current requirement of T+3 and would apply to margin calls related to portfolios of all eligible products. NYSE member organizations would not be permitted to deduct any portfolio margin maintenance call amount from net capital in lieu of collecting the required margin from the customer.

d. Waiver of $5.0 Million Equity Requirement

The proposed amendments would permit customers that are not broker-dealers or members of a national futures exchange to effect transactions solely in security futures and listed single stock options without maintaining $5.0 million in equity as required under the Pilot for broad-based securities index products.[20]

e. Risk Disclosure Statement and Acknowledgement

The Pilot requires a broker-dealer to provide a portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. This disclosure statement highlights the risks and describes the operation of a portfolio margin account. The disclosure statement also describes, among other things, eligibility requirements for opening a portfolio margin account, the instruments that are allowed in the account, and when deposits to meet margin and minimum equity requirements are due. Further, at or prior to the time a portfolio margin account is initially opened, the broker-dealer is required to obtain a signed acknowledgement concerning portfolio margining from the customer. Under the current Pilot, a separate acknowledgement is required for cross-margining.[21]

The proposed rule change amends the disclosure requirements under Rule 726 to incorporate the expanded list of eligible products in the Pilot and other changes contained in the proposed rule change.

III. Summary of Comments Received and NYSE Response

The Commission received a total of three comment letters to the proposed rule change.[22] The comments, in general, were supportive. One commenter stated that it ''is strongly supportive of the NYSE's efforts to incorporate portfolio margining into Rule 431 and hopes the Commission will speedily approve amendments to Rule 431 to increase the scope of portfolio margining.'' [23] Each commenter, however, recommended changes to specific provisions of the proposed rule change.

Two of the commenters stated that the list of eligible products should be expanded under the Pilot to include a broader range of assets including all listed and OTC equity securities.[24] Three commenters stated that operational and legal issues make it difficult to have separate accounts for portfolio margining and cross margining as required under the Pilot.[25] One commenter suggested that the Pilot should allow for portfolio margining to be done through a single account, rather than requiring that cross-margining be done through a separate account.[26] The NYSE's subsequent rule filing responds to these comments through further proposed amendments.[27] Specifically, in that expanded filing, the Exchange proposed eliminating the cross margin account and expanding the types of eligible products that can be included in a portfolio margin account.[28] In its response to comments, the Exchange also encouraged the Commission to adopt this subsequent proposed rule filing.[29]

One commenter stated that the multiplier of $.375 should be changed to $.25 per contract to be more consistent with Appendix A to Rule 15c3–1.[30] The Exchange noted that it is concerned about the amount of potential leverage that can be created at each broker-dealer and believes that the higher minimum requirement would serve as an added cushion in the event of a severe market movement. Even though positions in the

[17] These are the same ranges applied to options market makers under Appendix A to Rule 15c3–1 (17 CFR 240.15c3–1a), which permits a broker-dealer when computing net capital to calculate securities haircuts on options and related positions using a portfolio margin methodology. *See* 17 CFR 240.15c3–1a(b)(1)(iv)(A); *see also* Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard Lewandowski, Vice President, Regulatory Division, The Chicago Board Options Exchange, Inc. (Jan. 13, 2000).

[18] This range also is consistent with Rule 15c3–1a. *See supra* note 17.

[19] The pricing model would need to meet the requirements in Rule 15c3–1a. Currently, the only model that qualifies under Rule 15c3–1a is the OCC's Theoretical Intermarket Margining System (TIMS).

[20] *See* proposed rule 431(g)(9)(A).

[21] ''Cross-margining'' refers to the inclusion of futures that are not securities in a portfolio as is permitted under the current Pilot for portfolios of broad-based securities index products.

[22] *See supra* note 6.

[23] *See* SIA Letter.

[24] *See* SIA Letter and Citigroup Letter.

[25] *See* SIA Letter; Citigroup Letter; and FIA Letter.

[26] *See* SIA Letter.

[27] *See* SR–NYSE–2006–13 (proposal to expand list of eligible products in the Pilot and eliminate the separate cross-margin account). *See supra* note 8.

[28] *Id.*

[29] *Id.; see also* NYSE Response.

[30] *See* SIA Letter. 17 CFR 240.15c3–1a.

account are hedged, the Exchange noted that it is concerned about potential illiquidity in the market that could create sizeable gap risk in the event that both sides of a hedge cannot be closed out at the same time.[31]

One commenter also suggested that sophisticated member firms should be able to utilize proprietary models to estimate potential losses in determining portfolio margin requirements.[32] In response to this comment, the Exchange stated that it would like to gain additional experience with the use of such risk models before it could permit its member organizations to utilize these models for margining purposes.[33]

Finally, the Exchange stated that it will continue to work with the Commission staff and respective industry committees to address future enhancements to portfolio margining.[34]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[36] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements and will better align margin requirements with the actual risk of hedged positions. Moreover, the Commission notes that approving the proposed rule change would be consistent with the Federal Reserve Board's 1998 amendments to Regulation T, which sought to advance the use of portfolio margining.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[37] that the proposed rule change (File No. SR–NYSE–2005–93), is approved on a pilot basis to expire on July 31, 2007.

[31] *See* NYSE Response.

[32] *See* Citigroup Letter.

[33] *See* NYSE Response.

[34] *See* NYSE Response.

[35] In approving this proposed rule change, the Commission notes thatit has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11312 Filed 7–17–06; 8:45 am]

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[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54126; File No. SR–NYSEArca–2006–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the NYSE Arca, Inc. Amending Rules To Mandate Listed Companies Become Eligible To Participate in a Direct Registration System

July 11, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 19, 2006, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend its rules to mandate that all listed companies become eligible to participate in a Direct Registration System (''DRS'') administered by a clearing agency registered under section 17A of the 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, NYSE Arca 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 NYSE Arca has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified portions of the text of the summaries prepared by the NYSE Arca.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend its rules to mandate that all listed companies become eligible to participate in DRS administered by a clearing agency registered under section 17A of the Act.

DRS is a system that allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position in eligible securities on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer.[3] DRS, therefore, allows an investor to have eligible securities registered in her name without having a certificate issued to her and to electronically transfer, thereby eliminating the risk and delays associated with the use of certificates, her securities to her broker-dealer in order to effect a transaction.

In 2004, the Commission issued a concept release, Securities Transaction Settlement, discussing whether self-regulatory organizations (''SROs'') that list securities should adopt rules to require issuers to participate in DRS.[4] Subsequently, representations of the New York Stock Exchange, the NASDAQ Stock Market, the American Stock Exchange, DTC, and the Securities Industry Association entered into discussions that resulted in the decision to propose common rules that would require listed companies to become eligible to participate in DRS but would not require listed companies to participate in DRS.[5] There is an expectation that requiring listed

[3] Currently, the only registered clearing agency operating a DRS is The Depository Trust Company (''DTC''). For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR–DTC–96–15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR–DTC–99–16] (order approving implementation of the Profile Modification System).

[4] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), [File No. S7–13–04].

[5] The Commission has published notices for proposed rule changes filed by the New York Stock Exchange LLC, NASDAQ Stock Market LLC, and the American Stock Exchange LLC that would require certain listed companies securities become DRS eligible. Securities Exchange Act Release Nos. 53912 (May 31, 2006), 71 FR 33030 (June 7, 2006) [File No. SR–NYSE–2006–29]; 53913 (May 31, 2006), 71 FR 33024 (June 7, 2006) [File No. SR–NASDAQ–2006–008]; and 53911 (May 31, 2006), 71 FR 33009 (June 7, 2006) [File No. SR–Amex–2006–40].

companies to be eligible to participate in DRS will accelerate the trend already evident among companies to participate in DRS.

Under the proposed rule change, NYSE Arca will impose its DRS eligibility requirement pursuant to proposed new Rule 7.62(c).[6] The proposed new rule does not require that securities listed for trading on NYSE Arca must be eligible for the DRS. Rather it requires listed companies' securities be eligible for a direct registration system operated by a clearing agency, as defined in section 3(a)(23) of the Act,[7] that is registered with the Commission pursuant to section 17A(b)(2) of the Act. Therefore, while the DRS operated by DTC is currently the only DRS facility meeting the definition, proposed new Rule 7.62(c) could provide issuers with the option of using another qualified DRS if one should exist in the future.

Currently, in order to make a security DRS-eligible in DRS operated by DTC, the issuer must have a transfer agent which is a DTC DRS Limited Participant.[8] NYSE Arca understands that the larger transfer agents serving NYSE Arca's listed company community are already eligible to participate in DRS. However, taking into account the diversity of the issuers and transfer agents across all the markets that will be required to make securities eligible for DRS and facilitate DRS eligibility, some transfer agents may need to take steps to become eligible to participate in DRS, and some issuers may decide to change their transfer agent. In addition, NYSE Arca has been notified that some issuers may need to amend their certificates of incorporation or their by-laws before they can make their securities DRS eligible.

To allow sufficient time for any such necessary actions, NYSE Arca proposes to impose the DRS eligibility requirement in two steps. Companies listing for the first time should have greater flexibility to conform to the eligibility requirements; therefore, proposed Rule 7.62(c) would require all securities initially listing on NYSE Arca on or after January 1, 2007, be eligible for DRS at the time of listing. This provision does not extend to securities of companies (i) which already have securities listed on the NYSE Arca, (ii) which immediately prior to such listing had securities listed on another registered securities exchange in the U.S., or (iii) which are specifically permitted under NYSE Arca's rules to be and which are book-entry only. On and after January 1, 2008, all securities listed on the NYSE Arca will be required to be eligible for DRS except those securities which are specifically permitted under NYSE Arca rules to be and which are book-entry only. The securities which NYSE Arca permits to be book-entry only include all debt securities, securities listed or traded pursuant to Rule 5.2(j), securities listed or traded pursuant to Rule 8, and nonconvertible stock.[9]

(2) Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] NYSE Arca believes that the proposed new Rule 7.62(c) is consistent with its obligations under section 6(b)(5) because issuers will be encouraged to use DRS, which should facilitate reducing the use of securities certificates and in turn should promote more efficient clearing and settling of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE Arca has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 Number SR–NYSE–2006–29 in 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–NYSEArca-2006–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also

[6] The exact text of the NYSE Arca prepared rule change is set forth in its filing, which can be found at *http://www.nysearca.com/regulation/filings.*

[7] 15 U.S.C. 78a.

[8] DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR7–DTC–96–15].

[9] NYSE Arca's Rule 5(j) pertains to, among other things, equity linked notes, investment company units, index-linked exchangeable notes, equity gold shares, index-linked securities. Rule 8 pertains to currency and index warrants.

[10] 15 U.S.C. 78f(b)(5).

will be available for inspection and copying at the principal office of the NYSE Arca and on the NYSE Arca's Web site, *http://www.nysearca.com.* 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–NYSEArca–2006–31 and should be submitted on or before August 8, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11313 Filed 7–17–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0455]

Rembrandt Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Rembrandt Venture Partners II, L.P., 2200 Sand Hill Road, Suite 160, Menlo Park, CA 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Rembrandt Venture Partners II, L.P. proposes to provide equity/debt security financing to Sylantro Systems Corporation, 910 East Hamilton Avenue, Campbell, CA 95008. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Argo Global Capital and Schrier Holdings III, both Associates of Rembrandt Venture Partners II, L.P., own more than ten percent of Sylantro Systems Corporation. Therefore, Sylantro Systems Corporation, is considered an Associate of Rembrandt Venture Partners II, L.P., as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 28, 2006.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–11315 Filed 7–17–06; 8:45 am]

BILLING CODE 8025–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10528]

California Disaster #CA–00034 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California Disaster #CA–00034 dated July 6, 2006.

Incident: Fishery Resource Disaster.

Incident Period: January 1, 2001 through December 31, 2005.

Effective Date: July 6, 2006.

EIDL Loan Application Deadline Date: April 6, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the fishery resource disaster under 308(b) of Interjurisdictional Fisheries Act of 1986, as amended, to help West Coast fishing communities in Oregon and California as determined by the Secretary of Commerce, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Del Norte, Humboldt, Marin, Mendocino, Monterey, San Francisco, San Mateo, Santa Cruz, Sonoma.

Contiguous Counties:

California: Alameda, Fresno, Glenn, Kings, Lake, Napa, San Benito, San Luis Obispo, Santa Clara, Siskiyou, Solano, Tehama, Trinity.

Oregon: Curry, Josephine.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 10528 0.

(Catalog of Federal Domestic Assistance Number 59002)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–11317 Filed 7–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10527]

Oregon Disaster #OR–00013 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon Disaster #OR–00013 dated July 6, 2006.

Incident: Fishery Resource Disaster.

Incident Period: January 1, 2001 through December 31, 2005.

Effective Date: July 6, 2006.

EIDL Loan Application Deadline Date: April 6, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the fishery resource disaster under 308(b) of Interjurisdictional Fisheries Act of 1986, as amended, to help West Coast fishing communities in Oregon and California as determined by the Secretary of Commerce, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Coos, Curry, Douglas, Lane, Lincoln, Tillamook.

Contiguous Counties:

Oregon: Benton, Clatsop, Columbia, Deschutes, Jackson, Josephine, Klamath, Linn, Polk, Washington, Yamhill.

California: Del Norte.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 10527 0.

(Catalog of Federal Domestic Assistance Number 59002)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–11318 Filed 7–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10515 and #10516]

Pennsylvania Disaster Number PA–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Pennsylvania (FEMA–1649–DR), dated July 4, 2006.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: June 23, 2006 and continuing.

Effective Date: July 7, 2006.

Physical Loan Application Deadline Date: September 5, 2006.

EIDL Loan Application Deadline Date: April 4, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center,14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Pennsylvania, dated July 4, 2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Dauphin, Lackawanna, Lancaster, Lebanon, Montour, Northumberland.

Contiguous Counties:

Pennsylvania: Snyder, Union, York.
Maryland: Harford.

All other information in the original declaration remains unchanged.
(Catalog of Federal Domestic Assistance Number 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–11314 Filed 7–17–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10515 and #10516]

Pennsylvania Disaster Number PA–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1649–DR), dated July 4, 2006.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: June 23, 2006 and continuing.

Effective Date: July 6, 2006.

Physical Loan Application Deadline Date: September 5, 2006.

EIDL Loan Application Deadline Date: April 4, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Pennsylvania, dated July 4, 2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Montgomery, Franklin, Bucks, Columbia, Northampton.

Contiguous Counties:

Maryland: Frederick, Washington.
New Jersey: Burlington, Hunterdon, Mercer.
Pennsylvania: Adams, Cumberland, Fulton, Huntingdon, Juniata, Lycoming, Montour, Perry, Philadelphia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–11316 Filed 7–17–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5467]

Memorandum of Agreement Between the U.S. Department of State and the Council on Accreditation Regarding Performance of Duties as an Accrediting Entity Under the Intercountry Adoption Act of 2000

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (IAA). Among other things, the IAA gives the Secretary of State responsibility for the accreditation of agencies and approval of persons to provide adoption services under the Convention. The IAA requires the Department to enter into agreements with one or more qualified entities under which such entities will perform the tasks of accrediting agencies and approving persons, monitoring compliance of such agencies and persons with applicable requirements, and other related duties set forth in section 202(b) of the IAA. This notice is to inform the public that on July 12, 2006, the Department exercised its authority under the IAA and entered into a Memorandum of Agreement (MOA) with the Council on Accreditation under which the Department designated the Council on Accreditation as an accrediting entity. In its role as an accrediting entity, the Council on Accreditation will be accrediting or approving qualified agencies and persons throughout the United States in accordance with the procedures and standards set forth in 22 CFR Part 96 to enable them to provide adoption services in cases subject to the Convention once the Convention enters into force for the United States. The Department will monitor the performance of the Council on Accreditation and approve fees charged by it as an accrediting entity. The text of the MOA, signed on July 12, 2006 by Maura Harty, Assistant Secretary for Consular Affairs, U.S. Department of State and signed on July 6, 2006 by Richard Klarberg, President and Chief Executive Officer, Council on Accreditation, is included at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Mikiko Stebbing at 202–736–9086. Hearing or speech-impaired persons

may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) Nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) State adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that State. Both nonprofit accrediting entities and state accrediting entities must meet any other criteria that the Department may by regulation establish. The Council on Accreditation is a nonprofit private entity with expertise in developing and administering standards for entities providing child welfare services throughout the United States. The final rule on accreditation of agencies and approval of persons (22 CFR Part 96) was published in the **Federal Register** (71 FR 8064–8066, February 15, 2006). The final rule contains the Department's additional criteria for designation as an accrediting entity. The final rule also establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated accrediting entities will follow in accrediting or approving adoption service providers.

Memorandum of Agreement Between the Department of State Bureau of Consular Affairs and the Council on Accreditation

Parties and Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department) and the Council on Accreditation (COA), with its principal office located at 120 Wall Street, 11th floor, New York, NY 10005, hereinafter the ''Parties'', are entering into this agreement for the purpose of designating COA as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279 and 22 CFR Part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR Part 96, and Delegation of Authority 261. COA has full authority to enter into this MOA pursuant to a resolution passed by its Board of Trustees dated June 30, 2006, a copy of which is attached hereto as Attachment 1, which resolution authorizes Richard Klarberg to execute this agreement on behalf of COA.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2. In addition, the terms ''transitional application deadline'' (TAD) and ''date of initial accreditation or approval'' (DIAA) shall have the meaning given them in 22 CFR 96.19 and ''uniform notification date'' (UND) shall have the meaning given it in 22 CFR 96.58.

The Parties *agree as follows:*

Article 1—Designation of the Accrediting Entity

The Department hereby designates COA as an accrediting entity and thereby authorizes it to accredit (including temporarily accredit) agencies and approve persons to provide adoption services in Convention adoption cases, in accordance with the procedures and standards set forth in 22 CFR Part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7(a).

Article 2—Accreditation Responsibilities and Duties of the Accrediting Entity

(1) COA agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, Part 96 of 22 CFR and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, COA will operate under policy direction from the Department regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity.

(2) COA will take appropriate staffing, funding, and other measures to allow it to carry out all of its functions and fulfill all of its responsibilities, and will use the adoptions tracking system and the Hague complaint registry (ATS/HCR) as directed by the Department, including by updating required data fields in a timely fashion.

(3) In carrying out its accrediting entity functions COA will:

(a) Prepare to accept applications by the TAD by expending its own funds and other resources for materials development, staff training, travel and meeting attendance in advance of receiving any fees for its services as an accrediting entity;

(b) Make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR Part 96 and using only the standards in subpart F of 22 CFR Part 96 and the substantial compliance weighting system approved by the Department pursuant to para. 5, Article 3 below;

(c) Make decisions on temporary accreditation in accordance with the procedures and standards in subpart N of 22 CFR Part 96 and the procedures presented to the Department pursuant to para. 3, Article 3 below;

(d) Charge applicants for accreditation, approval, or temporary accreditation only fees approved by the Department pursuant to para. 4, Article 3 below;

(e) Consistent with 22 CFR 96.19 and 96.97, use its best efforts to evaluate and decide by the DIAA all applications for accreditation, temporary accreditation, or approval that were submitted by the TAD;

(f) Review complaints, including complaints regarding conduct alleged to have occurred abroad, in accordance with subpart J of 22 CFR Part 96 and the additional procedures approved by the Department pursuant to paragraphs 3(c) and 3(d) in Article 3, below. COA will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred abroad.

(g) Take adverse actions against accredited agencies, temporarily accredited agencies, and approved persons in accordance with subparts K and N of 22 CFR Part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate enforcement action.

(h) Assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;

(i) Refer an adoption service provider to the Department for debarment if, but only if, it concludes after investigation that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;

(j) Promptly report any change in the accreditation (including temporary accreditation) or approval status of an adoption service provider to the relevant state licensing authority.

(k) Maintain and use only the required procedures approved by the Department and those procedures

presented to the Department pursuant to Article 3 of this agreement whenever they apply.

Article 3—Preparatory Tasks (Tasks Preceding the Transitional Application Deadline)

(1) *Accreditation Materials and Training:* In coordination with the Department and any other designated accrediting entities, by a date agreed upon by the Parties, COA will:

(a) Develop forms, training materials, and evaluation practices;

(b) Determine whether joint training of evaluators or other personnel is practical, and, if so, assist in conducting or participate in any joint training sessions;

(c) Develop explanatory guidance to assist applicants for accreditation, temporary accreditation, and approval in achieving substantial compliance with the applicable standards.

(2) *Development of Internal Review Procedure:* COA will develop and present to the Department for approval, by a date agreed upon by the Parties, procedures that it will maintain and use to determine whether to terminate adverse actions against an accredited agency or approved person on the grounds that the deficiencies necessitating the adverse action have been corrected.

(3) *Development of Other Procedures:* COA will develop and present to the Department, by a date agreed upon by the Parties, procedures that it will maintain and use:

(a) To evaluate whether a candidate for temporary accreditation meets the applicable eligibility requirements set forth in 22 CFR 96.96;

(b) To carry out its annual monitoring duties;

(c) To review thoroughly complaints or information referred to it through the Hague Complaint Registry or from the Department directly, including procedures for obtaining complete and accurate information about conduct alleged to have occurred abroad;

(d) To review complaints that it receives about its own actions as an accrediting entity for Hague adoption service providers;

(e) To make the public disclosures required by 22 CFR 96.91; and

(f) To ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals and accommodations, which charges shall be in addition to the fees charged under 22 CFR 96.8.

(4) *Fee Schedule Development:*

(a) COA will develop a fee schedule for accreditation, temporary accreditation, and approval services that meets the requirements of 22 CFR 96.8. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A–25 paragraph 6(d)(1), of accreditation, temporary accreditation, and approval services. COA will submit a fee schedule developed using this methodology together with comprehensive documentation justifying the proposed fees to the Department for approval by a date agreed by the Parties.

(b) The approved fee schedule can be amended with the approval of the Department.

(5) *Substantial Compliance Weighting Systems Development:*

(a) COA will develop a substantial compliance weighting system as described in 22 CFR 96.27, and will submit it to the Department for approval by a date agreed upon by the Parties.

(b) COA will develop a separate substantial compliance weighting system to be used in evaluating temporarily accredited agencies that incorporates the performance standards in 22 CFR 96.104 and will submit it to the Department for approval by a date agreed upon by the Parties.

(c) In developing the systems described in paragraphs (a) and (b) of this section, COA will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4—Initial Accreditation (Including Temporary Accreditation) and Approval Tasks

(1) The Department will consult with COA and all other accrediting entities before establishing the transitional application deadline (TAD), the uniform notification date (UND), and the deadline for initial accreditation or approval (DIAA).

(2) Within an agreed number of days following the TAD, COA will make public the names and addresses of agencies and persons that have applied to be accredited (including temporarily accredited) or approved, provide a mechanism for the public to comment on applicants, and consider comments received from the public in its decisions on applicants. With respect to additional applications received prior to entry into force of the Convention, COA will make the names of such applicants public within an agreed number of days following receipt. COA will consider any public comments in its decisions on the additional applicants.

(3) In conformity with 22 CFR 96.58, COA will not release its accreditation (including temporary accreditation) and approval decisions prior to the UND. COA will prepare the list of decisions to be announced on the UND and transmit the information as directed by the Department. COA will immediately notify the Department of any corrections, so that the Department may rely upon this list in compiling the list of initially accredited and approved adoption service providers that it will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

Article 5—Data Collection, Reporting and Records

(1) *Adoptions Tracking System/Hague Complaint Registry (ATS/HCR):*

(a) COA will maintain and fund a computer and internet connection for use with the ATS/HCR that meets system requirements set by the Department;

(b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/HCR and facilitate any necessary training in use of the ATS/HCR;

(2) *Annual Report:* COA will report on dates agreed upon by the Parties, in a mutually agreed upon format, the information required in 22 CFR 96.93 as provided in that section through ATS/HCR.

(3) *Additional Reporting:* COA will provide any additional status reports or data as reasonably required by the Department, and in a mutually agreed upon format.

(4) *Accrediting Entity Records:* COA will retain all records related to its accreditation functions and responsibilities in printed or electronic form in accordance with the electronic recordkeeping policy that applies to Federal acquisition contracts under Federal Acquisition Regulation 4.703 for a minimum of six years after their creation, or until any litigation, claim or audit related to the records filed or noticed within the six year period is finally terminated, whichever is longer.

Article 6—Department Oversight and Monitoring

(1) *To facilitate oversight and monitoring by the Department, COA will:*

(a) Provide copies of its forms and other materials to the Department and give Department personnel the opportunity to participate in any training sessions for its evaluators or other personnel;

(b) Allow the Department to inspect all records relating to its accreditation

functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;

(c) Submit to the Department by a date agreed upon by the Parties an annual declaration signed by the President and Chief Executive Officer confirming that COA is complying with the IAA, 22 CFR Part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;

(d) Make appropriate senior-level officers available to attend a yearly performance review meeting with the Department;

(e) Immediately report to the Department events which have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, legal or disciplinary actions against the organization, and conflicts of interest;

(f) Notify the Department of any requests for information relating to its role as an accrediting entity under the IAA or Department functions or responsibilities that it receives from Central Authorities of other Hague signatories, or any other foreign government authorities (except for routine requests concerning accreditation, temporary accreditation, or approval status or other information publicly available under subpart M of Part 96) , and consult with the Department before releasing such information;

(g) Consult immediately with the Department about any issue or event that may affect compliance with the IAA or U.S. compliance with obligations under the Convention.

(2) *Departmental Approval Procedures:* In all instances in which the Department must approve a policy, system, fee schedule, or procedure before COA can bring it into effect or amend it, COA will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department's AE Liaison via email where possible. The AE Liaison will be responsible for coordinating the Department's approval process and arranging any necessary meetings or telephone conferences with COA. Formal approval by the Department will be conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

(3) *Suspension or Cancellation:* When the Department is considering suspension or cancellation of COA's designation:

(a) The Department will notify COA in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;

(b) COA will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unfounded within 10 business days;

(c) Upon request, the Department will also meet with the accrediting entity by teleconference or in person;

(d) If the Department, in its sole discretion, is not satisfied with the actions or explanation of COA, it will notify COA in writing of its decision to suspend or cancel COA's designation and this agreement;

(e) COA will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits (including temporarily accredits) or approves to another accrediting entity, including by transferring fees collected by COA for services not yet performed.

(4) By a date agreed upon by the Parties, the Parties will agree upon procedures for handling complaints against the accrediting entity received by the Department or referred to the Department because the complainant was not satisfied with the accrediting entity's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 7—Other Issues Agreed by the Parties

(1) *Conflict of interest provisions:*

(a) COA shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers. COA shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

(b) COA shall identify for the Department all members of its board of directors or other governing body, employees, and site evaluators who also serve as officers, directors, employees, or owners of adoption service providers. COA shall demonstrate it has procedures in place to ensure that any such relationships will not influence any accreditation (including temporary accreditation) or approval decisions, and shall maintain and use these procedures.

(c) COA shall disclose to the Department any other situation or circumstance that may create the appearance of a conflict of interest.

(2) *Liability:* COA agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, including by maintaining adequate liability insurance for its actions as an accrediting entity brought by agencies and/or persons seeking to be accredited or approved or who are accredited or approved, and to inform the Department immediately of any events that may affect its ability to defend itself (e.g., change in or loss of insurance coverage, change in relevant state law). COA agrees that it will consult with the Department immediately if it becomes aware of any other legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

Article 8—Liaison Between the Department and the Accrediting Entity

(1) COA's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Standards Associate. The Department's principal point of contact for communication is the Accrediting Entity Liaison officer in the Office of Children's Issues, Bureau of Consular Affairs, U.S. Department of State.

(2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 1.

Article 9—Certifications and Assurances

(1) COA certifies that it will comply with all requirements of applicable State and Federal law.

Article 10—Agreement, Scope, and Period of Performance

(1) *Scope:*

(a) This agreement is not intended to have any effect on any activities of COA that are not related to its functions as an accrediting entity for adoption service

providers providing adoption services in intercountry adoptions under the Hague Convention.

(b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds. The Department, consistent with the IAA, may not provide any funds to the accrediting entity for the performance of accreditation and approval functions.

(c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.

(d) Nothing in this agreement shall release COA from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, 22 CFR Part 96, or any other applicable laws or regulations.

(2) Duration: COA's designation as an accrediting entity and this agreement shall remain in effect for 5 years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of COA. The Parties may mutually agree in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(3) Changed Circumstances: If unforeseen circumstances arise that will render COA unable to continue to perform its duties as an Accrediting Entity, COA will immediately inform the Department of State. The Parties will consult and make an effort to find a solution that will enable COA to continue to perform until the end of the contract period. If no such solution can be reached, the contract may be terminated on a mutually agreed date or, if mutual agreement can not be reached, on not less than 14 months written notice from COA.

(4) Severability: To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the regulations implementing the IAA or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.

(5) Entirety of Agreement: This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Attachment 1—Resolution Unanimously Adopted by the Board of Trustees of the Council on Accreditation

June 30, 2006.

''Be it resolved, that Richard Klarberg is authorized to execute a Memorandum of Agreement by and between the Council on Accreditation (COA) and the Department of State, Bureau of Consular affairs pursuant to which COA is designated as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279 and 22 C.F.R. Part 96.''

Dated: July 12, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–11362 Filed 7–17–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Final Rule Amending the Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information is needed to identify and track regulated entities required to implement antidrug and alcohol misuse prevention programs as well as those companies that opt to implement programs. A notice for this collection appeared in the **Federal Register** on July 12, 2006, Vol. 71, No. 133, pgs. 39385–39386 with two incorrect titles attached to it: ''Operating Requirements: Commuter and On-Demand Operation'' and ''FAA Research and Development Grants''. The correct title is ''Final Rule Amending the Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation''.

DATES: Please submit comments by September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Final Rule Amending the Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0685.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 7240 Respondents.

Frequency: The information is collected as needed.

Estimated Average Burden Per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 1,066 annually.

Abstract: This information is needed to identify and track regulated required to implement anti-drug and alcohol misuse prevention programs as well as those companies that opt to implement programs. The respondents are aviation employees operating under 14 CFR parts 121, 135, and 145, Air traffic control facilities not operated by the FAA or the U.S. military, operators as defined in 14 CFR 135(c), and certain contractors.

Addresses: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 1033, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–6284 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–22]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations(14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–24689, FAA–2006–24862, and FAA–2006–25210] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Sue Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 10, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–24689.
Petitioner: Bryan W. Taylor.
Section of 14 CFR Affected: 14 CFR 21.191(i)(1).
Description of Relief Sought: To allow the petitioner to obtain an experimental airworthiness certificate for the purpose of operating light-sport aircraft for an Interplane SRO Skyboy aircraft.

Docket No.: FAA–2006–24862.
Petitioner: Hiller Aircraft Corporation.
Section of 14 CFR Affected: 14 CFR 45.15.
Description of Relief Sought: To allow the petitioner to sell aircraft parts without complying with the marking requirements of part 45.

Docket No.: FAA–2006–25210.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 21.27(a).
Description of Relief Sought: To allow the petitioner's Model BC–17 aircraft to be exempt from the requirement for the aircraft to be accepted for operational use and declared surplus by an armed force of the United States.

[FR Doc. E6–11375 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–25366]

Notice of Request To Approve a Revision of a Currently Approved Information Collection: Highway Safety Improvement Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a revision of a currently approved information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 4, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 17, 2006.

ADDRESSES: You may send comments within 30 days to the Office of Information andRegulatory Affairs, Office of Management and Budget, 725 17th Street, NW.,Washington, DC, 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2006–25366.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Epstein,202–366–2157, Office of Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control No: 2125–0025.

Background: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) amended Section 148 of Title 23 U.S.C. to establish a new ''core'' Highway Safety Improvement Program (HSIP) that provides funds to State Departments of Transportation (DOTs) to improve conditions at hazardous highway locations and hazardous railway-highway grade crossings on all public roads, including those maintained by Federal, State and local agencies. The existing provisions of Title 23 U.S.C. 130, Railway-Highway Crossings Program, and 152, Hazard Elimination Program, as well as implementing regulations in 23 CFR part 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31, three reports related to the conduct and effectiveness of their HSIPs, that are to include information on: (a) Progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic crashes, injuries and fatalities [Sections 148(g) and 152(g)]; (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(g)], which will be used by FHWA to

produce and submit biennial reports to Congress required on April 1, beginning April 1, 2006; and, (c) description of at least 5 percent of the State's highway locations exhibiting the most severe safety needs, including an estimate of the potential remedies, their costs, and impediments to their implementation other than cost for each of the locations listed (i.e., the ''5 percent report'') [Section 148(c)(1)(D)]. To be able to produce these reports, State DOTs must have crash data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, and determining the ''before'' and ''after'' crash experiences at HSIP project locations. This information provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels. Per SAFETEA–LU, State DOTs have a great deal of flexibility in the methodology they use to rank the relative severity of their public road locations in terms of fatalities and serious injuries. The list of 5 percent of these locations exhibiting the most severe safety needs will result from the ranking methodology used, and may include roadway segments and/or intersections. For example, a State may compare its roadway locations against statewide average rates of fatalities and serious injuries per 100 million vehicle miles traveled for similar type facilities and determine that those segments whose rates exceed the statewide rates are the locations with the ''most severe'' safety needs, and then at least 5 percent of those locations would be included in the required annual report.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: This report must be submitted annually.

Estimated Average Burden per Response: 500 hours (This is an increase of 300 burden hours from the current OMB approved 200 burden hours. The new report will take an additional 300 hours plus the 200 hours for the existing two reports).

Estimated Total Annual Burden Hours: 25,500 hours (51 states at an average of 500 hours each).

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 13, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–11366 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Arlington County, VA, and Washington, DC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared, in cooperation with the Virginia Department of Transportation and the District of Columbia Department of Transportation, for potential transportation improvements in the 14th Street Bridge Corridor, from South Capitol Street in Washington, DC to Virginia Route 27 in Arlington, VA, including the 14th Street Bridge over the Potomac River.

FOR FURTHER INFORMATION CONTACT: Jack Van Dop, Senior Technical Specialist, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166, Telephone 703–404–6282; or Lisa Thaxton, Environmental Protection Specialist, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166, Telephone 571–434–1552.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara.*

Background

With this notice of intent, the FHWA is initiating the National Environmental Policy Act (NEPA) process including the preparation of an environmental impact statement (EIS), for the 14th Street Bridge Corridor to study potential alternatives to reduce congestion, enhance safety, and improve traffic operations in the 14th Street Bridge Corridor.

A full range of transportation and demand management alternatives will be considered along with the No Build Alternative, including, but not limited to: Transportation systems management (TSM), transportation demand management (TDM), various modes of transit, build alternatives, facility expansion and/or renovation, evacuation routing, congestion mitigation (including but not limited to incident management, work zone operations, access management and partnering), and bicycle and pedestrian modes. These alternatives will be developed, screened, and subjected to detailed analysis in the draft environmental impact statement based on their ability to address the Purpose and Need, while attempting to avoid known and sensitive resources.

Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate Federal, State and local agencies who have expressed or are known to have an interest or legal role in this proposal. A formal scoping meeting will be held as part of the NEPA process to facilitate local, state, and Federal agency involvement. Private organizations, citizens, and interest groups will also have an opportunity to provide input into the development of the EIS and identify issues that should be addressed. A comprehensive public participation program will be developed to involve the public in the project development process. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public meetings/hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning this notice of proposed action and when the draft EIS is made available should be directed to the FHWA at the address provided under the caption **FOR FURTHER INFORMATION CONTACT**. Additional information can be obtained by visiting the Web site *http://www.14thStreetBridgeCorridorEIS.com.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 12, 2006.

Donald R. Tuggle,

Director, Program Administration, Federal Highway Administration, Sterling, Virginia.

[FR Doc. E6–11338 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to a proposed highway project, Interstate 495 (i.e., Capital Beltway), I–95/I–395/I–495 Interchange to the American Legion Bridge, in the County of Fairfax, State of Virginia. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 16, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Sundra, Senior Environmental Specialist, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, Virginia 23240–0249; telephone: (804) 775–3338; e-mail: *Ed.Sundra@fhwa.dot.gov.* The FHWA Virginia Division Office's normal business hours are 7 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. Earl T. Robb, Environmental Administrator, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219; telephone: (804) 786–4559; e-mail: *Earl.Robb@vdot.virginia.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing approvals for the following highway project in the State of Virginia: Interstate 495 (i.e., Capital Beltway), I–95/I–395/I–495 Interchange to the American Legion Bridge, in the County of Fairfax. The project will be approximately 22.5 km (14 mi) long and consists of improvements to the mainline as well as improvements at nine interchanges located within the project limits. Specifically, two high occupancy vehicle (HOV) lanes will be added to the main line in each direction and be managed as high occupancy toll (HOT) lanes. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on April 18, 2006, in the FHWA Record of Decision (ROD) issued on June 29, 2006, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Virginia Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://project1.parsons.com/capitalbeltway/.*

This notice applies to all FHWA decisions and approvals as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 USC 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Science Enhancement (Wildflowers), 23 U.S.C. 319.

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–200(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Executive Orders: E.O. 1190 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 6, 2006.

Edward Sundra,

Senior Environmental Specialist, Richmond, Virginia.

[FR Doc. 06–6265 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23459]

Hours of Service of Drivers: National Ready Mixed Concrete Association Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Ready Mixed Concrete Association (NRMCA) for a 2-year exemption from certain provisions of the hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers. Under the exemption, drivers of ready-mixed concrete vehicles in designated areas would be allowed to operate under the 100 air-mile radius exception from the requirement to prepare records of duty status (RODS) provided they are released from work within 14 hours following 10 consecutive hours off duty. Additionally, NRMCA requests an exemption from the requirement that a CMV driver record his or her duty status for each 24-hour period using the methods prescribed in the HOS rules. NRMCA is requesting the exemption on behalf of ready-mixed concrete

producers operating within a 100 air-mile radius, in interstate commerce, delivering to active construction sites in Alabama, Florida, Louisiana, Mississippi, and Texas. NRMCA states that approximately 800 drivers and the same number of ready-mixed concrete vehicles will operate under the requested exemption. NRMCA bases its request on the fact that many companies and their drivers are working to rebuild areas affected by the record number of hurricanes during the 2005 hurricane season. FMCSA requests public comment on NRMCA's application for exemption.

DATES: Comments must be received on or before August 17, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket No.FMCSA–2005–23459] using any of the following methods:

- *Web Site:* Go to *http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want to be notified that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Division Chief, Driver and Carrier Operations Division (MC–PSD), Office of Bus and Truck Standards and Operations, phone (202) 366–4009, e-mail *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, June 9, 1998, 112 Stat. 107) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Application for Exemption

NRMCA seeks an exemption from the requirement for drivers to prepare RODS. The exemption would apply to ready-mixed concrete drivers that operate within 100 air-miles of the drivers' normal work reporting location, return to the work reporting location, and are released from work within 14 hours. Currently, 49 CFR 395.1(e)(1) provides an exception from the RODS requirement for drivers operating within 100 air-miles but returning within 12 hours. The request is limited to holders of Class A or B commercial driver's licenses and to interstate deliveries to active construction sites in Alabama, Florida, Louisiana, Mississippi, and Texas. Drivers' normal work reporting locations must also be in one of these States. The request is further limited to drivers who ''* * * must deliver to active commercial, residential or local, state or federal construction sites * * *.'' NRMCA indicated that approximately 800 drivers and the same number of ready-mixed concrete vehicles will be affected by the requested exemption. NRMCA bases its request on the fact that many companies and their drivers are working to rebuild areas affected by the record number of hurricanes during the 2005 hurricane season.

In addition, NRMCA requests that ready-mixed concrete drivers utilizing the requested exemption complete, and that motor carriers require such drivers to complete, an alternative time record that contains (1) The driver's name, (2) the date, (3) start time, (4) stop time, (5) total hours worked daily, (6) total hours for the week, (7) normal work reporting location, and (8) the driver's signature. This differs from the current requirement for time records for drivers using the 100 air-mile exception in 49 CFR 395.1(e)(1) by adding the requirement for the driver's signature.

NRMCA suggests that reducing the paperwork without diminishing public safety will benefit and facilitate ongoing rebuilding activities. It proposes, as a condition under the terms of the exemption, to select individual ready-mixed concrete producers and monitor the number of DOT-recordable accidents that occur among the producers, and it will report its findings to FMCSA. NRMCA requests the exemption extend for a period of two years from the date of approval.

A copy of NRMCA's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment on NRMCA's application for exemption from 49 CFR 395.1(e). FMCSA will consider all comments received by close of business on August 17, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file

comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: July 10, 2006.

David H. Hugel,

Acting Administration.

[FR Doc. E6–11289 Filed 7–17–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2005–22657]

RIN 2132–AA85

Charter Service Negotiated Rulemaking Advisory Committee

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of new meeting location and time of the meeting.

SUMMARY: This notice lists the location and time of the next Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meeting.

DATES: *Effective Date:* July 18, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202–366–1936 (*elizabeth.martineau@dot.gov*). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Meeting Location

The Radisson Hotel, 2020 Jefferson Davis Highway, Arlington, VA 22202 (Crystal City).

Meeting Time

July 17th, 9 a.m.–4:30 p.m., July 18th, 8:30 a.m.–4 p.m.

Issued this 11th day of July, 2006, in Washington DC.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–6324 Filed 7–14–06; 12:25 pm]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 273X)]

The Alabama Great Southern Railroad Company—Discontinuance of Service Exemption—in Saint Bernard Parish, LA

The Alabama Great Southern Railroad Company (AGS), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 4.50-mile line of railroad, between milepost 0.00 PT, at Poydras Junction, and milepost 4.50 PT, at Toca, in Saint Bernard Parish, LA. The line traverses United States Postal Service Zip Code 70085.

AGS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years, and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 17, 2006,[2] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] must be filed by July 28, 2006. Petitions to reopen must be filed by August 7, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Senior General Attorney, The Alabama Great Southern Railroad Company, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 11, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–11267 Filed 7–17–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Because this is a discontinuance of service proceedingand not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

[2] Because this is a discontinuance proceeding, trailuse/rail banking and public use conditions are not applicable.

[3] Each OFA must be accompanied by the filing fee, whichwas increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue

Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Information Return of Foreign Trust With A U.S. owner.

OMB Number: 1545–0160. Form Number: 3520–A.

Abstract: Internal Revenue Code section 6048(b) requires that foreign trusts with at least on U.S. beneficiary must file an annual information return. Form 8520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3820–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 43 hrs., 24 min.

Estimated Total Annual Burden Hours: 21,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–11280 Filed 7–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6478

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6478, Credit for Alcohol Used as Fuel.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Credit for Alcohol Used as Fuel.

OMB Number: 1545–0231.

Form Number: 6478.

Abstract: IRC section 38(b)(3) allows a nonrefundable income tax credit for businesses that sell or use alcohol mixed with other fuels or sold as straight alcohol. Small ethanol producers are also allowed a nonrefundable credit for production of qualified ethanol. Form 6478 is used to compute the credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,300.

Estimated Time Per Respondent: 8 hrs., 31 min.

Estimated Total Annual Burden Hours: 28,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is no required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–11281 Filed 7–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8830

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8830, Enhanced Oil Recovery Credit.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1282.

Form Number: 8830.

Abstract: Internal Revenue Code section 43 allows taxpayers to elect a tax credit of 15% of the qualified oil recovery costs paid or incurred during the year. The credit is phased out as the reference price of crude oil for the prior year exceeds $28 per barrel. Form 8830 is used by taxpayers to compute the credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,416.

Estimated Time Per Response: 7 hours, 10 minutes.

Estimated Total Annual Burden Hours: 17,323.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer

[FR Doc. E6–11283 Filed 7–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–D

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–D, United States Additional Estate Tax Return Under Code Section 2057.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return Under Code Section 2057.

OMB Number: 1545–1680.

Form Number: 706–D.

Abstract: A qualified heir will use Form 706–D to report and to pay the additional estate tax imposed by Code section 2057. Section 2057 requires an additional tax when certain ''taxable events'' occur with respect to a qualified family-owned business interest received by a qualified heir. IRS will use the information to determine that the additional estate tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 180.

Estimated Time Per Respondent: 2 hours, 50 minutes.

Estimated Total Annual Burden Hours: 512.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–11284 Filed 7–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2003–38

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2003–38, Compliance Initiative for Foreign Corporations and Nonresident Aliens, with Related Document on Frequency Asked Questions.

DATES: Written comments should be received on or before September 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Compliance Initiative for Foreign Corporations and Nonresident Aliens, with Related Document on Frequency Asked Questions.

OMB Number: 1545–1845.

Notice Number: Notice 2003–38.

Abstract: Notice 2003–38 explains a compliance initiative that is available to nonresident aliens and foreign corporations that have not filed timely income tax returns in accordance with the regulations under section 874(a) or 882(c)(2). The initiative is intended to encourage these taxpayers to file required returns. In addition, the notice explains the procedures by which affected taxpayers may participate in the initiative.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 10, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–11288 Filed 7–17–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,

July 18, 2006

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 41

Federal Reserve System

12 CFR Part 222

Federal Deposit Insurance Corporation

12 CFR Parts 334 and 364

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 571

National Credit Union Administration

12 CFR Part 717

Federal Trade Commission

16 CFR Part 681

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket No. 06–07]

RIN 1557–AC87

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R–1255]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 334 and 364

RIN 3064–AD00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[No. 2006–19]

RIN 1550–AC04

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

FEDERAL TRADE COMMISSION

16 CFR Part 681

RIN 3084–AA94

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (FTC or Commission).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA and FTC (the Agencies) request comment on a proposal that would implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). As required by section 114, the Agencies are jointly proposing guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity, that indicate the possible existence of identity theft. The Agencies also are proposing joint regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines, including a provision requiring credit and debit card issuers to assess the validity of a request for a change of address under certain circumstances.

In addition, the Agencies are proposing joint regulations under section 315 that provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agency.

DATES: Comments must be submitted on or before September 18, 2006.

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, you may comment to any of the Agencies and you need not send comments (or copies) to all of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please submit your comments by e-mail whenever possible. Commenters are encouraged to use the title ''Red Flags Rule'' in addition to the docket or RIN number to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit comments in accordance with the following instructions:

OCC: You should designate OCC in your comment and include Docket Number 06–07. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- E-mail address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public Reference Room, Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Reference Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review the comments received by the OCC and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments received at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Reference Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents using the methods described earlier.

Board: You may submit comments, identified by Docket No. R–1255, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- E-mail: Comments@FDIC.gov. Include the RIN number in the subject line of the message.

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3502 North Fairfax Drive, Arlington, VA, 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by No. 2006–19, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• E-mail: *regs.comments@ots.treas.gov.* Please include No. 2006–19 in the subject line of the message and include your name and telephone number in the message.

• Fax: (202) 906–6518.

• Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–19.

• Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–19.

Instructions: All submissions received must include the agency name and number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.

• E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule 717, Identity Theft Red Flags,'' in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

FTC: Comments should refer to ''The Red Flags Rule, Project No. R611019,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

• E-mail: Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-redflags* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-redflags.*

• Federal eRulemaking Portal: If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

• Mail or Hand Delivery: A comment filed in paper form should include ''The Red Flags Rule, Project No. R611019,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Deborah Katz, Senior Counsel, or Andra Shuster, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Paul Utterback, Compliance Specialist, Compliance Department, (202) 874–5461; or Aida Plaza Carter, Director, Bank Information Technology, (202) 874–4740, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David A. Stein, Counsel, or Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–3667; Andrew Miller, Counsel, Legal Division, (202) 452–

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

3428; or John Gibbons, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–6409, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Jeffrey M. Kopchik, Senior Policy Analyst, (202) 898–3872 or David P. Lafleur, Policy Analyst, (202) 898–6569, Division of Supervision and Consumer Protection; Richard M. Schwartz, Counsel, (202) 898–7424, or Richard B. Foley, Counsel, (202) 898–3784, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Glenn Gimble, Senior Project Manager, Operation Risk, (202) 906–7158; Kathleen M. McNulty, Technology Program Manager, Information Technology Risk Management, (202) 906–6322; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Regina M. Metz, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FTC: Naomi B. Lefkovitz, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–3228, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington DC 20580

SUPPLEMENTARY INFORMATION: This notice contains the following sections:

I. Section 114 of the FACT Act

A. Background

The President signed the FACT Act into law on December 4, 2003. Pub. L. 108–159 (2003). The FACT Act added several new provisions to the Fair Credit Reporting Act of 1970 (FCRA), 15 U.S.C. 1681 *et seq.*, that relate to the detection, prevention, and mitigation of identity theft.[2] Section 114 amends section 615 of the FCRA and requires the Agencies to jointly issue guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In developing the guidelines, the Agencies must identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The guidelines must be updated as often as necessary, and cannot be inconsistent with the policies and procedures required under section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l), which requires verification of the identity of persons opening new accounts.

Section 114 also directs the Agencies to consider including reasonable guidelines providing that a financial institution or creditor ''shall follow reasonable policies and procedures'' for notifying the consumer, ''in a manner reasonably designed to reduce the likelihood of identity theft,'' when a transaction occurs in connection with a consumer's credit or deposit account that has been inactive for two years.

In addition, the Agencies must jointly prescribe regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or customer.

The joint regulations must include a provision generally requiring credit and debit card issuers to assess the validity of change of address requests. In particular, if the card issuer receives a notice of change of address for an existing account, and within a short period of time (during at least the first 30 days) receives a request for an additional or replacement card for the same account, the issuer must follow reasonable policies and procedures designed to prevent identity theft. Under these circumstances, the card issuer may not issue the card unless it (1) Notifies the cardholder of the request at the cardholder's former address and provides the cardholder with a means to promptly report an incorrect address; (2) notifies the cardholder of the address change request by another means of communication previously agreed to by the issuer and the cardholder; or (3) uses other means of evaluating the validity of the address change in accordance with the reasonable policies and procedures established by the card issuer to comply with the joint regulations.

Section 114 broadly describes elements that belong in the regulations and those that belong in the ''guidelines'' without defining this term. The Agencies are proposing to implement the requirements of section 114 through regulations (Red Flag Regulations) requiring each financial institution and creditor to implement a written Identity Theft Prevention Program (Program). The Program must contain reasonable policies and procedures to address the risk of identity theft. The Agencies also are proposing guidelines that identify patterns, practices, and specific forms of activity that indicate a possible risk of identity theft (Red Flag Guidelines or Appendix J). As required by statute, the Agencies will update the Red Flag Guidelines as often as necessary. The proposed Red Flag Regulations require financial institutions and creditors to incorporate relevant indicators of identity theft into their Programs. The Agencies request comment on whether the elements described in section 114 have been properly allocated between the proposed regulations and the proposed guidelines.

As required by section 114, the Agencies also are proposing joint regulations requiring credit card issuers to implement reasonable policies and procedures to assess the validity of a change of address.

B. Proposed Red Flag Regulations

1. Overview

The Agencies are proposing Red Flag Regulations that adopt a flexible risk-based approach similar to the approach used in the ''Interagency Guidelines Establishing Information Security Standards'' [3] issued by the Federal banking agencies (FDIC, Board, OCC and OTS), the ''Guidelines for Safeguarding Member Information'' issued by the NCUA,[4] and the ''Standards for Safeguarding Customer Information'' [5] issued by the FTC, (collectively, Information Security Standards), to implement section 501(b) of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801.

Under the proposed Red Flag Regulations, financial institutions and creditors must have a written Program that is based upon the risk assessment of the financial institution or creditor and that includes controls to address the identity theft risks identified. Like the program described in the Agencies' Information Security Standards, this Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities, and be flexible to address changing identity theft risks as they arise. A financial institution or creditor may wish to combine its program to prevent identity theft with its information security program, as these programs are complementary in many ways.[6]

[2] Section 111 of the FACT Act defines ''identity theft'' as ''a fraud committed using the identifying information of another person, subject to such further definition as the [Federal Trade] Commission may prescribe, by regulation.'' 15 U.S.C. 1681a(q)(3).

[3] 12 CFR part 30, app. B (national banks); 12 CFR part 208, app. D–2 and part 225, app. F (state member banks and holding companies); 12 CFR part 364, app. B (state non-member banks); 12 CFR part 570, app. B (savings associations).

[4] 12 CFR part 748, app. A.

[5] 16 CFR part 314.

[6] The Agencies note, however, that some creditors covered by the proposed Red Flag Guidelines are not financial institutions subject to Title V of the

Briefly summarized, under the proposed Red Flag Regulations, the Program of each financial institution or creditor must be designed to address the risk of identity theft to customers and to the safety and soundness of the financial institution or creditor. The Program must include policies and procedures to prevent identity theft from occurring, including policies and procedures to:

- Identify those Red Flags that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor;
- Verify the identity of persons opening accounts;
- Detect the Red Flags that the financial institution or creditor identifies as relevant in connection with the opening of an account or any existing account;
- Assess whether the Red Flags detected evidence a risk of identity theft;
- Mitigate the risk of identity theft, commensurate with the degree of risk posed;
- Train staff to implement the Program; and
- Oversee service provider arrangements.

The proposed Red Flag Regulations also require the board of directors or an appropriate committee of the board to approve the Program. In addition, the board, an appropriate committee of the board, or senior management must exercise oversight over the Program's implementation. Staff implementing the Program must report to its board, an appropriate committee or senior management, at least annually, on compliance by the financial institution or creditor with the Red Flag Regulations. These Regulations are described in greater detail in the section-by-section analysis that follows.

2. Proposed Red Flag Regulations: Section-by-Section Analysis

The OCC, Board, FDIC, OTS and NCUA propose putting the Red Flag Regulations and Guidelines in the FCRA part of their regulations, 12 CFR parts 41, 222, 334, 571, and 717, respectively. In addition, the FDIC proposes to cross-reference the Red Flag Regulations and Guidelines in 12 CFR part 364. For ease of reference, the discussion in this preamble uses the shared numerical suffix of each of these agency's regulations.[7]

Section ____.90 Duties regarding the detection, prevention, and mitigation of identity theft

Section ____.90(a) Purpose and Scope

Proposed § ____.90(a) sets forth the statutory authority for the proposed Red Flag Regulations, namely, section 114 of the FACT Act, which amends section 615 of the FCRA, 15 U.S.C. 1681m. It also defines the scope of this section; each of the Agencies has tailored this paragraph to describe those entities to which this section applies.

Section ____.90(b) Definitions

Proposed § ____.90(b) sets forth the definitions of various terms that apply to this section.

1. *Account.* Section 114 of the FACT Act does not use the term ''account.'' However, for ease of reference, the Agencies believe it is helpful to identify a single term to describe the relationships covered by section 114 that an account holder or customer may have with a financial institution or creditor. Therefore, for purposes of the Red Flag Regulations, the Agencies propose to use the term ''account'' to broadly describe the various relationships an account holder or customer may have with a financial institution or creditor that may become subject to identity theft.[8]

The proposed definition of ''account'' is similar to the definition of ''customer relationship'' found in the Agencies' privacy regulations.[9] In particular, the proposed definition of ''account'' is ''a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k).'' [10] The definition gives examples of an ''account'' including an extension of credit for personal, family, household or business purposes (such as a credit card account, margin account, or retail installment sales contract, including a car loan or lease), and a demand deposit, savings or other asset account for personal, family, household or business purposes (such as a checking or savings account). While the proposed definition of ''account'' is expansive, the risk-based nature of the proposed Red Flag Regulations affords each financial institution or creditor flexibility to determine which relationships will be covered by its Program through a risk evaluation process.

The Agencies request comment on the scope of the proposed definition of ''account.'' In particular, the Agencies solicit comment on whether reference to ''financial products and services that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act'' is appropriate to describe the relationships that an account holder or customer may have with a financial institution or creditor that should be covered by the Red Flag Regulations. The Agencies also request comment on whether the definition of ''account'' should include relationships that are not ''continuing'' that a person may have with a financial institution or creditor. In addition, the Agencies request comment on whether additional or different examples of accounts should be added to the Regulations.

2. *Board of Directors.* The proposed Red Flag Regulations discuss the role of the board of directors of a financial institution or creditor. However, the Agencies recognize that some of the financial institutions and creditors covered by the Regulations will not have a board of directors. Therefore, in addition to its plain meaning, the proposed definition of ''board of directors'' includes, in the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency. In the case of any other creditor that does not have a board of directors, ''board of directors'' is defined as a designated employee.

3. *Customer.* Section 114 of the FACT Act refers to ''account holders'' and ''customers'' of financial institutions and creditors without defining either of these terms. For ease of reference, the

GLBA and, therefore, are not required to have an information security program under the GLBA. Moreover, the term ''customer'' is defined more broadly in the proposed Red Flag Regulations than in the Information Security Standards.

[7] The FTC also proposes putting the Red Flag Regulations and Guidelines in the FCRA part of its regulations, specifically 16 CFR part 681. However, the FTC uses different numerical suffixes that equate to the numerical suffixes discussed in the preamble as follows: preamble suffix .82 = FTC suffix .1, preamble suffix .90 = FTC suffix .2, and preamble suffix .91 = FTC suffix .3. In addition, the Appendix J referenced in the preamble equates to Appendix A for the FTC.

[8] The Agencies recognize that, in other contexts, the FCRA defines the term ''account'' narrowly to describe certain deposit relationships. *See* 15 U.S.C. 1681a(r)(4).

[9] *See* 12 CFR 40.3(i)(1) (OCC); 12 CFR 216.3(i)(1) (Board); 12 CFR 332.3(i)(1) (FDIC); 12 CFR 573.3(i)(1) (OTS); 12 CFR 716.3(j) (NCUA); and 16 CFR 313.3(i)(1) (FTC).

[10] *See* 12 CFR 225.86 for a description of activities that are ''financial in nature or incidental to a financial activity,'' and explanation that these include activities that are ''closely related to banking,'' as set forth in 12 CFR 225.28, such as fiduciary, agency, custodial, brokerage and investment advisory activities.

Agencies are proposing to define ''customer'' to encompass both ''customers'' and ''account holders.'' Thus, ''customer'' means a person that has an account with a financial institution or creditor.

The proposed definition of ''customer'' is broader than the definition of this term in the Information Security Standards. The proposed definition applies to any ''person,'' defined by the FCRA as any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.[11]

The Agencies chose this broad definition because, in addition to individuals, various types of entities (*e.g.*, small businesses) can be victims of identity theft. Although the definition of ''customer'' is broad, a financial institution or creditor would have the discretion to determine which type of customer accounts will be covered under its Program, since the proposed Red Flag Regulations are risk-based.[12] The Agencies solicit comment on the scope of the proposed definition of ''customer.''

4. *Identity Theft.* The proposed definition of ''identity theft'' states that this term has the same meaning as in 16 CFR 603.2(a). Section 111 of the FACT Act added several new definitions to the FCRA, including ''identity theft.'' However, section 111 granted authority to the FTC to further define this term.[13] The FTC exercised this authority and issued a final rule, which became effective on December 1, 2004, that defines ''identity theft'' as ''a fraud committed or attempted using the identifying information of another person without authority.''[14] The FTC's rule defines ''identifying information'' to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, such as a name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.[15]

This definition of ''identity theft'' in the FTC's rule would be applicable to the Red Flag Regulations. Accordingly, ''identity theft'' within the meaning of the proposed Red Flag Regulations includes both actual and attempted identity theft.

5. *Red Flag.* The proposed definition of a ''Red Flag'' is a pattern, practice, or specific activity that indicates the possible risk of identity theft. This definition is based on the statutory language. Section 114 states that in developing the Red Flag Guidelines, the Agencies must identify patterns, practices, and specific forms of activity that indicate ''the possible existence'' of identity theft. In other words, the Red Flags identified by the Agencies must be indicators of ''the possible existence'' of ''a fraud committed or attempted using the identifying information of another person without authority.''[16]

Section 114 also states that the purpose of the Red Flag Regulations is to identify ''possible risks'' to account holders or customers or to the safety and soundness of the institution or ''customer''[17] from identity theft. The Agencies believe that a ''possible risk'' of identity theft may exist even where the ''possible existence'' of identity theft is not necessarily indicated. For example, electronic messages to customers of financial institutions and creditors directing them to a fraudulent website in order to obtain their personal information (''phishing''), and a security breach involving the theft of personal information often are a means to acquire the information of another person for use in committing identity theft. Because of the linkage between these events and identity theft, the Agencies believe that it is important to include such precursors to identity theft as Red Flags. Defining these early warning signals as Red Flags will better position financial institutions and creditors to stop identity theft at its inception. Therefore, the Agencies have defined ''Red Flags'' expansively to include those precursors to identity theft which indicate ''a possible risk'' of identity theft to customers, financial institutions, and creditors.

The Agencies request comment on the scope of the definition of ''Red Flags'' and, specifically, whether the definition of Red Flags should include precursors to identity theft.

6. *Service Provider.* The proposed definition of ''service provider'' is a person that provides a service directly to the financial institution or creditor. This definition is based upon the definition of ''service provider'' in the Agencies'' standards implementing section 501(b) of the GLBA.[18]

Section ____.90(c) Identity Theft Prevention Program

Proposed paragraph § ____.90(c) describes the primary objectives of the Program. It states that each financial institution or creditor must implement a written Program that includes reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, in the manner described in § ____.90(d). The program must address financial, operational, compliance, reputation, and litigation risks.

The risks of identity theft to a customer may include financial, reputation and litigation risks that occur when another person uses a customer's account fraudulently, such as by using the customer's credit card account number to make unauthorized purchases. The risks of identity theft to the safety and soundness of the financial institution or creditor may include: compliance, reputation, or litigation risks for failure to adequately protect customers from identity theft; operational and financial risks from absorbing losses to customers who are the victims of identity theft; or losses to the financial institution or creditor from opening an account for a person engaged in identity theft. Addressing identity theft in these circumstances would not only benefit customers, but would also benefit the financial institution or creditor, and any person (who has no relationship with the financial institution or creditor) whose identity has been misappropriated.

In addition, proposed paragraph § ____.90(c) states that the Program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities. Thus, the proposed Red Flag Regulations are flexible and take into account the operations of smaller institutions.[19]

Proposed paragraph § ____.90(c) also states that the Program must address

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[11] See 15 U.S.C. 1681a(b).

[12] Under proposed § ____.90(d)(1), this determination must be substantiated by a risk evaluation that takes into consideration which customer accounts of the financial institution or creditor are subject to a risk of identity theft.

[13] 15 U.S.C. 1681a(q)(3).

[14] 69 FR 63922 (Nov. 3, 2004) (codified at 16 CFR 603.2(a)).

[15] See 16 CFR 603.2(b) for additional examples of ''identifying information,'' including unique biometric identifiers.

[16] See 16 CFR 603.2(a)(defining ''identity theft'').

[17] Use of the term ''customer'' here appears to be a drafting error and likely should read ''creditor.'' Use of the term ''customer'' here appears to be a drafting error and likely should read ''creditor.''

[18] 12 CFR part 30, app. B (national banks); 12 CFR part 208, app. D–2 and part 225, app. F (state member banks and holding companies); 12 CFR part 364, app. B (state non-member banks); 12 CFR part 570, app. B (savings associations); 12 CFR part 748, app. A (credit unions); 16 CFR part 314 (FTC regulated financial institutions).

[19] Agencies ''are expected to take into account the limited personnel and resources available to smaller institutions and craft such regulations and guidelines in a manner that does not unduly burden these smaller institutions.'' See 149 Cong. Rec. E2513 (daily ed. December 8, 2003) (statement Rep. Oxley).

changing identity theft risks as they arise based upon the experience of the financial institution or creditor with identity theft. In addition, the Program must also address changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, in the types of accounts the financial institution or creditor offers, and in its business arrangements, such as mergers and acquisitions, alliances and joint ventures, and service provider arrangements.

Thus, to ensure the Program's effectiveness in addressing the risk of identity theft to customers and to its own safety and soundness, each financial institution or creditor must monitor, evaluate, and adjust its Program, including the type of accounts covered, as appropriate. For example, a financial institution or creditor must periodically reassess whether to adjust the types of accounts covered by its Program and whether to adjust the Red Flags that are a part of its Program based upon any changes in the types and methods of identity theft that it experiences.

Section ____.90(d) Development and Implementation of Identity Theft Prevention Program.

1. Identification and Evaluation of Red Flags

i. Risk-Based Red Flags

Under proposed paragraph § ____.90(d)(1)(i), the Program must include policies and procedures to identify which Red Flags, singly or in combination, are relevant to detecting the possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation described in § ____.90(d)(1)(ii). The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from Appendix J, applicable supervisory guidance, incidents of identity theft that the financial institution or creditor has experienced, and methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

The proposed Red Flags enumerated in Appendix J are indicators of a possible risk of identity theft that the Agencies compiled from literature on the topic, information from credit bureaus, financial institutions, creditors, designers of fraud detection software, and the Agencies' own experiences. Some of the Red Flags may, by themselves, be reliable indicators of a possible risk of identity theft, such as a photograph on identification that is not consistent with the appearance of the applicant. Some Red Flags may be less reliable except in combination with additional Red Flags, such as where a home phone number and address submitted on an application match the address and number provided by another applicant. Such a match may be attributable to identity theft or, for example, it may indicate that the two applicants who share a residence are opening separate accounts.

The Agencies expect that the final Red Flag Regulations will apply to a wide variety of financial institutions and creditors that offer many different products and services, from credit cards to certain cell phone accounts. The Agencies are not proposing to prescribe which Red Flags will be relevant to a particular type of financial institution or creditor. For this reason, the proposed Regulations provide that each financial institution and creditor must identify for itself which Red Flags are relevant to detecting the risk of identity theft, based upon the risk evaluation described in § ____.90(d)(1)(ii).

The Agencies recognize that some Red Flags that are relevant today may become obsolete as time passes. While the Agencies expect to update Appendix J periodically,[20] it may be difficult to do so quickly enough to keep pace with rapidly evolving patterns of identity theft or as quickly as financial institutions and creditors experience new types of identity theft. The Agencies may, however, be able to issue supervisory guidance more rapidly. Therefore, proposed paragraph § ____.90(d)(1)(i) provides that each financial institution and creditor must have policies and procedures to identify any additional Red Flags that are relevant to detecting a possible risk of identity theft from applicable supervisory guidance, incidents of identity theft that the financial institution or creditor has experienced, and methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

Given the changing nature of identity theft, a financial institution or creditor must incorporate Red Flags on a continuing basis so that its Program reflects changing identity theft risks to customers and to the financial institution or creditor as they arise. Ultimately, a financial institution or creditor is responsible for implementing a Program that is designed to effectively detect, prevent, and mitigate identity theft. The Agencies request comment on whether the enumerated sources of Red Flags are appropriate.

The Agencies understand that many financial institutions and creditors already have implemented sophisticated policies and procedures to detect and prevent fraud, including identity theft, through such methods as detection of anomalous patterns of account usage. Often these policies and procedures include the use of complex computer-based products, such as sophisticated software. The Agencies attempted to draft this section in a flexible, technologically neutral manner that would not require financial institutions or creditors to acquire expensive new technology to comply with the Red Flag Regulations, and also would not prevent financial institutions and creditors from continuing to use their own or a third party's computer-based products. The Agencies note, however, that a financial institution or creditor that uses a third party's computer-based programs to detect fraud and identity theft must independently assess whether such programs meet the requirements of the Red Flag Regulations and Red Flag Guidelines and should not rely solely on the representations of the third party.

The Agencies request comment on the anticipated impact of this proposed paragraph on the policies and procedures that financial institutions and creditors currently have to detect, prevent, and mitigate identity theft, including on third party computer-based products that are currently being used to detect identity theft.

ii. Risk Evaluation

Proposed paragraph § ____.90(d)(1)(ii) provides that in order to identify which Red Flags are relevant to detecting a possible risk of identity theft to its customers or to its own safety and soundness, the financial institution or creditor must consider:

A. Which of its accounts are subject to a risk of identity theft;

B. The methods it provides to open these accounts;

C. The methods it provides to access these accounts; and

D. Its size, location, and customer base.

This provision describes a key part of the Program of a financial institution or creditor. Under proposed paragraph § ____.90(d)(1)(ii), the financial institution or creditor must define the scope of its Program by assessing which of its accounts are subject to a risk of identity theft. For example, the financial institution or creditor must assess

[20] Section 114 directs the Agencies to update the guidelines as often as necessary. See 15 U.S.C. 1681m(e)(1)(a).

whether it will identify Red Flags in connection with extensions of credit only, or whether other types of relationships, such as deposit accounts, are likely to be subject to identity theft and should, therefore, be included in the scope of its Program. It must also assess whether to include solely the accounts of individual customers, or whether other types of accounts, such as those of small businesses, will be included in the scope of its Program. The financial institution or creditor must determine which Red Flags are relevant when it initially establishes its Program, and whenever it is necessary to address changing risks of identity theft.

The factors enumerated in proposed § ____.90(d)(1)(ii) are nearly identical to those that each financial institution must consider when designing procedures for verifying the identity of customers opening new accounts in accordance with the Customer Identification Program (CIP) rules, issued to implement section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l).[21] The Agencies believe that these CIP factors are equally relevant in the Red Flags context. For example, the Red Flags that may be relevant when an account is opened in a face-to-face transaction may be different from those relevant to an account that is opened remotely, by telephone, or over the Internet.

The Agencies solicit comment on whether the factors that must be considered are appropriate and whether any additional factors should be included.

2. Identity Theft Prevention and Mitigation

Proposed § ____.90(d)(2) states that the Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account. This section then describes the following policies and procedures that the Program must include. Some of the policies and procedures relate solely to account openings. Others relate to existing accounts.

i. Verify Identity of Persons Opening Accounts

Proposed paragraph § ____.90(d)(2)(i) states that the Program must include reasonable policies and procedures to obtain identifying information about, and verify the identity of, a person opening an account. This provision is designed to address the risk of identity theft to a financial institution or creditor that occurs in connection with the opening of new accounts.

Some financial institutions and creditors already are subject to the CIP rules, which require verification of the identity of customers opening accounts. A financial institution or creditor may satisfy the proposed requirement in § ____.90(d)(2)(i) to have policies and procedures for verifying the identity of a person opening an account by applying the policies and procedures for identity verification it has developed to comply with the CIP rules. However, the financial institution or creditor must use the CIP policies and procedures to verify the identity of any ''customer,'' meaning any person that opens a new account, in connection with any type of ''account'' that its risk evaluation indicates could be the subject of identity theft. By contrast, the CIP rules exclude a variety of entities from the definition of ''customer'' and exclude a number of products and relationships from the definition of ''account.'' The Agencies are not proposing any exclusions from either of these terms given the risk-based nature of the Red Flag Regulations.[22]

The Agencies recognize, however, that not all financial institutions and creditors that must implement the Red Flag Regulations are required to comply with the CIP rules. This provision would allow any financial institution or creditor to follow the CIP rules to satisfy the Red Flag requirements to obtain identifying information about, and verify the identity of, a person opening an account. This approach is designed to ensure that, as stated in section 114, the Red Flag Guidelines are not inconsistent with the policies and procedures required by the CIP rules.

ii. Detect Red Flags

Proposed paragraph. § ____.90(d)(2)(ii) states that the Program must include reasonable policies and procedures to detect the Red Flags identified pursuant to paragraph § ____.90(d)(1).

iii. Assess the Risk of Identity Theft

Proposed paragraph § ____.90(d)(2)(iii) states that the Program must include policies and procedures to assess whether the Red Flags the financial institution or creditor has detected pursuant to paragraph § ____.90(d)(2)(ii) evidence a risk of identity theft. It also states that a financial institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft.

Factors indicating that a Red Flag does not evidence a risk of identity theft might include: Patterns of spending that are inconsistent with established patterns of activity on an account because the customer is traveling abroad, or an inconsistency between the social security number on an account application and a consumer report because numbers inadvertently were transposed during the application process.

iv. Address the Risk of Identity Theft

Proposed paragraph § ____.90(d)(2)(iv) states that the Program must include policies and procedures that address the risk of identity theft to the customer, the financial institution, or creditor, commensurate with the degree of risk posed. The Regulations then provide an illustrative list of measures that a financial institution or creditor may take,[23] including:

A. Monitoring an account for evidence of identity theft;

B. Contacting the customer;

C. Changing any passwords, security codes, or other security devices that permit access to a customer's account;

D. Reopening an account with a new account number;

E. Not opening a new account;

F. Closing an existing account;

G. Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

H. Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the

[21] See, *e.g.*, 31 CFR 103.121 (banks, savings associations, credit unions, and certain non-federally regulated banks); 31 CFR 103.122 (broker-dealers); 31 CFR 103.123 (futures commission merchants).

[22] See, *e.g.*, 31 CFR 103.121(a).

[23] In the case of credit, the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, applies. Under ECOA, it is unlawful for a creditor to discriminate against any applicant for credit because the applicant has in good faith exercised any right under the Consumer Credit Protection Act (CCPA). 15 U.S.C. 1691(a). A consumer who requests the inclusion of a fraud alert or active duty alert in his or her credit file is exercising a right under the FCRA, which is a part of the CCPA, 15 U.S.C. 1601 *et seq.* 15 U.S.C. 1681c–1. Consequently, when a credit file contains a fraud or active duty alert, a creditor must take reasonable steps to verify the identity of the individual in accordance with the requirements in 15 U.S.C. 1681c–1 before extending credit, closing an account, or otherwise limiting the availability of credit. The inability of a creditor to verify the individual's identity may indicate that the individual is engaged in identity theft and, in those circumstances, the creditor may decline to open an account, close an account or take other reasonable actions to limit the availability of credit.

opening of an account, or an existing account; or

I. Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

Financial institutions and creditors typically use such measures to mitigate the risk of identity theft. In addition, measures E through G are actions that each financial institution subject to the CIP rules must include in its procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer.[24] Measure H describes the procedures required in section 112 of the FACT Act, 15 U.S.C. 1681c–1(h), that are applicable to a prospective user of credit reports when a user obtains a credit report that includes a fraud alert or active duty alert. Measure I describes the requirements in section 623 of the FCRA, 15 U.S.C. 1681s–2, applicable to a furnisher of information to consumer reporting agencies that discovers inaccurate or incomplete information about a consumer.

These measures illustrate various actions that a financial institution or creditor may take depending upon the degree of risk that is present. For example, a financial institution or creditor may choose to contact a customer to determine whether a material change in credit card usage reflects purchases made by the customer or unauthorized charges. However, if the financial institution or creditor is notified that a customer provided his or her password and account number to a fraudulent website, it likely will close the customer's existing account and reopen it with a new account number.

The Agencies solicit comment on whether the enumerated measures should be included as examples that a financial institution or creditor may take and whether additional measures should be included.

3. Train Staff

Under proposed paragraph §____.90(d)(3), each financial institution or creditor must train staff to implement its Program. Proper training will enable staff to address the risk of identity theft. For example, staff should be trained to detect Red Flags with regard to new and existing accounts, such as discrepancies in identification presented by a person opening an account or anomalous wire transfers in connection with a customer's deposit account. Staff should also be trained to mitigate identity theft, for example, by recognizing when an account should not be opened.

4. Oversee Service Provider Arrangements

Proposed paragraph §____.90(d)(4) states that whenever a financial institution or creditor engages a service provider to perform an activity on its behalf that is covered by §____.90, the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section. For example, a financial institution or creditor that uses a service provider to open accounts on its behalf, may reserve for itself the responsibility to verify the identity of a person opening a new account, may direct the service provider to do so, or may use another service provider to verify identity. Ultimately, however, the financial institution or creditor remains responsible for ensuring that the activity is being conducted in compliance with a Program that meets the requirements of the Red Flag Regulations.

In addition, this provision would allow a service provider that provides services to multiple financial institutions and creditors to conduct activities on behalf of these entities in accordance with its own program to prevent identity theft, as long as the program meets the requirements of the Red Flag Regulations. The service provider would not need to apply the particular Program of each individual financial institution or creditor to whom it is providing services.

Under the Agencies' Information Security Standards, financial institutions must require their service providers by contract to safeguard customer information in any manner that meets the objectives of the Standards. The Standards provide flexibility for a service provider's information security measures to differ from the program that a financial institution implements. By contrast, the CIP regulations do not contain a service provider provision. Instead, the preamble to the CIP regulations simply states that the CIP regulations do not affect a financial institution's authority to contract for services to be performed by a third party either on or off the institution's premises, and also does not alter an institution's authority to use an agent to perform services on its behalf.[25] The Agencies invite comment on whether permitting a service provider to implement a Program, including policies and procedures to identify and detect Red Flags, that differs from the programs of the individual financial institution or creditor to whom it is providing services, would fulfill the objectives of the Red Flag Regulations. The Agencies also invite comment on whether it is necessary to address service provider arrangements in the Red Flag Regulations, or whether it is self-evident that a financial institution or creditor remains responsible for complying with the standards set forth in the Regulations, including when it contracts with a third party to perform an activity on its behalf.

5. Involve the Board of Directors and Senior Management

Proposed §____.90(d)(5) highlights the responsibility of the board of directors and senior management to develop and implement the Program. The board of directors or an appropriate committee of the board must approve the written Program. The board, an appropriate committee of the board, or senior management is charged with overseeing the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation. In addition, persons charged with overseeing the Program must review reports that must be prepared at least annually by staff regarding compliance by the financial institution or creditor with the Red Flag Regulations. The reports must discuss material matters related to the Program and evaluate issues such as: The effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program. This report will indicate whether the Program must be adjusted to increase its effectiveness.

The Agencies request comment regarding the frequency with which reports should be prepared for the board, a board committee, or senior management. The Agencies also request comment on whether this paragraph properly allocates the responsibility for oversight and implementation of the Program between the board and senior management.

C. Proposed Red Flag Guidelines: Appendix J

Section 114 of the FACT Act states that in developing the guidelines, the

[24] *See, e.g.*, 31 CFR 103.121(b)(2)(iii).

[25] 68 FR 25104 (May 9, 2003)(preamble to CIP rule applicable to banks, savings associations, and credit unions).

Agencies are directed to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The Agencies are proposing to implement this provision by requiring the Program of a financial institution or creditor to include policies and procedures that require the identification and detection of risk-based Red Flags.

As discussed earlier, the Program must include policies and procedures designed to identify Red Flags relevant to detecting a possible risk of identity theft from among those listed in Appendix J. The proposed Red Flags enumerated in Appendix J are indicators of a possible risk of identity theft that the Agencies compiled from a variety of sources. Appendix J covers Red Flags that may be detected in connection with an account opening or an existing account. Some of the Red Flags, by themselves, may be reliable indicators of identity theft, while others are more reliable when detected in combination with other Red Flags.

Recognizing that a wide range of financial institutions and creditors and a broad variety of accounts will be covered by the Red Flag Regulations, the proposed Regulations provide each financial institution and creditor with the flexibility to develop policies and procedures to identify which Red Flags in Appendix J are relevant to detecting the possible risk of identity theft.

The proposed list in Appendix J is not meant to be exhaustive. Therefore, proposed § ____.90(d)(1) of the Red Flag Regulations also provide that each financial institution and creditor must have policies and procedures to identify additional Red Flags from applicable supervisory guidance that may be issued from time-to-time, incidents of identity theft that the financial institution or creditor has experienced, and methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks. Ultimately, the financial institution or creditor is responsible for implementing a Program that is designed to effectively detect, prevent and mitigate identity theft.

The Agencies solicit comment on whether the proposed Red Flags listed in Appendix J are too specific or not specific enough, and whether additional or different Red Flags should be included.

Section 114 also directs the Agencies to consider whether to include reasonable guidelines for notifying the consumer when a transaction occurs in connection with a consumer's credit or deposit account that has been inactive for two years, in order to reduce the likelihood of identity theft. The Agencies considered whether to incorporate this provision directly into Appendix J, but determined that the two-year limit may not be an accurate indicator of identity theft given the wide variety of credit and deposit accounts that would be covered by the provision.

The Agencies have concluded, however, that activity in connection with an account that has been inactive for a period of time may be an indicator of a possible risk of identity theft, depending upon the circumstances. Therefore, the Agencies have incorporated a Red Flag on inactive accounts into Appendix J that is flexible and is designed to take into consideration the type of account, the expected pattern of usage of the account, and any other relevant factors.

The Agencies request comment on whether a provision that mirrors the statutory language regarding inactive accounts should be placed directly into Appendix J or the Red Flag Regulations, or whether the more flexible approach to inactive accounts proposed (*i.e.*, listing as a Red Flag the use of an account that has been inactive for a reasonably lengthy period of time) should be retained.

The Agencies also request comment on whether, for ease of use, this appendix should be moved to the end of Subpart J or remain at the end of the part as proposed.

D. Proposed Special Rules for Card Issuers: Section-by-Section Analysis

Section ____.91 Duties of Card Issuers Regarding Changes of Address

Section ____.91(a) Scope

Section 114 specifically provides that the Agencies must prescribe regulations requiring credit and debit card issuers to assess the validity of change of address requests. Therefore, in addition to the general rule in § ____.90 that applies to all financial institutions and creditors, the Agencies are proposing regulations for card issuers, namely a person described in § ____.90(a) that issues a debit or credit card. A financial institution or creditor that is a card issuer may incorporate the requirements of § ____.91 into its Program.

Section ____.91(b) Definitions

The proposed regulations include two definitions that are solely applicable to the special rule for card issuers. The first proposed definition is for the term ''cardholder.'' Section 114 states that the regulations must require the card issuer to follow reasonable policies and procedures to assess the validity of a change of address before issuing an additional or replacement card. Section 114 provides that a card issuer may satisfy this requirement by notifying ''the cardholder.''

The term ''cardholder'' is not defined in the statute. The legislative history relating to this provision indicates that ''issuers of credit cards and debit cards who receive a *consumer* request for an additional or replacement card for an existing account'' may assess the validity of the request by notifying ''the cardholder.'' [26] Presumably, the request will be valid if the consumer making the request and the cardholder are one and the same ''consumer.'' Therefore, the proposal defines ''cardholder'' as a consumer who has been issued a credit or debit card. Further, because ''consumer'' is defined in the FCRA as an ''individual'' [27] the proposed regulations will cover a request by an individual for a business card. The Agencies request comment on whether this definition of ''cardholder'' is appropriate.

The second proposed definition is for the phrase ''clear and conspicuous.'' Section ____.91 includes a provision requiring that any written or electronic notice provided by a card issuer to the consumer pursuant to the regulations be given in a ''clear and conspicuous manner.'' The proposed regulations define ''clear and conspicuous'' based on the definition of this phrase found in the Agencies' privacy regulations.[28]

The Agencies request comment on whether, for ease of use, the regulations implementing section 315 should define additional terms, such as ''card issuer,'' ''credit card,'' and ''debit card,'' that are already defined in the FCRA.

Section ____.91(c) General Requirements

As required by section 114, proposed § ____.91(c) states that a card issuer that receives notification of a change of address for a consumer's debit or credit card account, and within a short period of time afterwards (during at least the first 30 days after it receives such notification) receives a request for an additional or replacement card for the same account, may not honor the request and issue such a card, unless it assesses the validity of the change of address request in at least one of three ways. As specified in section 114, proposed paragraph § ____.91(c)

[26] *See* 149 Cong. Rec. E2513 (daily ed. December 8, 2003) (statement of Rep. Oxley) (emphasis added).

[27] 15 U.S.C. 1681a(c).

[28] 12 CFR 40.3(b)(1) (OCC); 12 CFR 216.3(b)(1) (Board); 12 CFR 332.3(b)(1) (FDIC); 12 CFR 573.3(b)(1) (OTS); 12 CFR 716.3(b)(1) (NCUA); 16 CFR 313.3(b)(1) (FTC).

provides that, in accordance with the card issuer's reasonable policies and procedures, and for the purpose of assessing the validity of the change of address, the card issuer must:

(i) Notify the cardholder of the request at the cardholder's former address and provide to the cardholder a means of promptly reporting incorrect address changes;

(ii) Notify the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(iii) Use other means of assessing the validity of the change of address, in accordance with the policies and procedures that the card issuer has established pursuant to § ____.90.

The proposed rule text specifies that the notification of a change of address must pertain to a ''consumer's'' debit or credit account, consistent with the legislative history discussed above.[29]

The Agencies request comment on this provision and, in particular, whether the Agencies should elaborate further on the means that a card issuer must use to assess the validity of a request for a change of address.

Section ____.91(d) Form of Notice

The Agencies note that section 114 is titled ''Establishment of Procedures for the Identification of Possible Instances of Identity Theft.'' The Agencies understand that Congress singled out this scenario involving card issuers and placed it in section 114 because it is well known to be a possible indicator of identity theft. The Agencies believe that a consumer needs to be able to recognize the urgent nature of a written or electronic notice that he or she receives from a card issuer pursuant to § ____.91(d). Therefore, the proposed regulations prescribe the form that such a notice should take. They state that any written or electronic notice that a card issuer provides under this paragraph must be clear and conspicuous and provided separately from its regular correspondence with the cardholder. Of course, a card issuer may give notice orally in accordance with the policies and procedures the cardholder has established pursuant to § ____.90(b).

The Agencies request comment on whether this section should elaborate further on the form that a notice provided under § ____.91(d) must take.

[29] *See* 149 Cong. Rec. E2513 (daily ed. December 8, 2003) (statement of Rep. Oxley) (describing this section as relating to ''issuers of credit cards and debit cards who receive a *consumer* request for an additional or replacement card for an existing account.'' (Emphasis added.))

II. Section 315 of the FACT Act

A. Background

Section 315 of the FACT Act amends section 605 of the FCRA, 15 U.S.C. 1681c, by adding a new section (h). Section 315 requires that, when providing consumer reports to requesting users, nationwide consumer reporting agencies (as defined in section 603(p) of the FCRA) (CRAs) must provide a notice of the existence of a discrepancy if the address provided by the user in its request ''substantially differs'' from the address the CRA has in the consumer's file.

Section 315 also requires the Agencies to jointly issue regulations that provide guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of address discrepancy. These regulations must describe reasonable policies and procedures for users of consumer reports to (i) enable them to form a reasonable belief that the user knows the identity of the person for whom it has obtained a consumer report, and (ii) reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the CRA.

B. Proposed Regulation Implementing Section 315: Section-by-Section Analysis

Section ____.82(a) Scope

The scope of section 315 differs from the scope of section 114. Section 315 applies to ''users of consumer reports'' and ''persons requesting consumer reports'' (hereinafter referred to as ''users''), as opposed to financial institutions and creditors. Therefore, section 315 does not apply to a financial institution or creditor that does not use consumer reports.

Section ____.82(b) Definition

The proposed rule defines ''notice of address discrepancy,'' a new term introduced in section 315.[30] The proposed definition is ''a notice sent to a user of a consumer report by a CRA pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference [31] between the address for the consumer provided by the user in requesting the consumer report and the address or addresses the CRA has in the consumer's file.''

The Agencies note that the provisions of section 315 requiring CRAs to provide notices of address discrepancy became effective on December 1, 2004. To the extent that CRAs each have developed their own standards for delivery of notices of address discrepancy, it is particularly important for users to be able to recognize and receive notices of address discrepancy, especially if they are being delivered electronically by CRAs. For example, CRAs may provide consumer reports with some type of a code to indicate an address discrepancy. Users must be prepared to recognize the code as an indication of an address discrepancy.

Section ____.82(c) Requirement to Form a Reasonable Belief

Proposed § ____.82(c) implements the requirement in section 315 that the Agencies prescribe regulations describing reasonable policies and procedures that will enable the user to form a reasonable belief that the user knows ''the identity of the person to whom the consumer report pertains'' when the user receives a notice of address discrepancy. Proposed § ____.82(c) states that a user must develop and implement reasonable policies and procedures for ''verifying the identity of the consumer for whom it has obtained a consumer report'' whenever it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user to form a reasonable belief that it knows the identity of the consumer for whom it has obtained a consumer report, or determine that it cannot do so.

This section also provides that if a user employs the policies and procedures regarding identification and verification set forth in the CIP rules,[32] it satisfies the requirement to have policies and procedures to verify the identity of the consumer. This provision takes into consideration that many users already may be subject to the CIP rules, and have in place procedures to comply with those rules, at least with respect to the opening of accounts. Thus, such a user could use its existing CIP policies and procedures to satisfy this requirement, so long as it applies them in all situations where it receives a notice of address discrepancy. In addition, any user, such as a landlord or employer, may adopt the CIP rules and apply them in all situations where it receives an address discrepancy to meet

[30] All other terms used in this section of the proposal have the same meanings as set forth in the FCRA (15 U.S.C. 1681a).

[31] The term used in the statute, ''substantially differs,'' is not defined. CRAs are responsible for determining when addresses substantially differ and, hence, when they must send a notice of address discrepancy to a user requesting a consumer report.

[32] *See, e.g.*, 31 CFR 103.121(b)(2)(i) and (ii).

this requirement, even if it is not subject to a CIP rule.

The Agencies request comment on whether the CIP procedures are sufficient to enable a user that receives a notice of address discrepancy with a consumer report to form a reasonable belief that it knows the identity of the consumer for whom it obtained the report, both in connection with the opening of an account, and in other circumstances where a user obtains a consumer report.[33]

The statutory requirement that a user must form a reasonable belief that it knows the identity of the consumer for whom it obtained a consumer report applies whether or not the user subsequently establishes a continuing relationship with the consumer. By contrast, the additional statutory requirement that a user reconcile the address of the consumer with the CRA only applies if the user establishes a continuing relationship with the consumer.

The requirement that the user form a reasonable belief that it knows the identity of the consumer is likely to benefit both consumers and users. For example, this requirement should reduce the likelihood that a user will rely on the wrong consumer report in making a decision about a consumer's eligibility for a product, such as the consumer report of another consumer with the same name who lives at a different address. In addition, these policies and procedures may assist the user to detect whether a consumer about whom it has requested a consumer report is engaged in identity theft or is a victim of identity theft.[34]

Section ____.82(d)(1) Requirement to Furnish Consumer's Address To a Consumer Reporting Agency

Proposed § ____.82(d)(1) provides that a user must develop and implement reasonable policies and procedures for furnishing to the CRA from whom it received the notice of address discrepancy an address for the consumer that the user has reasonably confirmed is accurate when the following three conditions are satisfied. The first condition set forth in proposed § ____.82(d)(1)(i) is that the user must be able to form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained. This condition will ensure that the user furnishes a new address for the consumer to the CRA only after the user forms a reasonable belief that it knows the identity of the consumer, using the policies and procedures set forth in paragraph § ____.82(c).

The second condition, set forth in proposed § ____.82(d)(1)(ii), is that the user furnish the address to the CRA if it establishes *or* maintains a continuing relationship with the consumer. Section 315 specifically requires that the user furnish the consumer's address to the CRA if the user *establishes* a continuing relationship with the consumer. Therefore, proposed § ____.82(d)(1)(ii) reiterates this requirement. However, a user also may obtain a notice of address discrepancy in connection with a consumer with whom it already has an existing relationship. Section 315 provides the Agencies with broad authority to prescribe regulations in all circumstances when a user has received a notice of address discrepancy. The Agencies have exercised this authority to provide that the user must also furnish the consumer's address to the CRA from whom the user has received a notice of address discrepancy when the user *maintains* a continuing relationship with the consumer.

Finally, as required by section 315, the third condition set out in proposed § ____.82(d)(1)(iii) is that if the user regularly and in the ordinary course of business furnishes information to the CRA from which a notice of address discrepancy pertaining to the consumer was obtained, the consumer's address must be communicated to the CRA as part of the information the user regularly provides.

Section ____.82(d)(2) Requirement To Confirm Consumer's Address

The Agencies note that section 315 requires the Agencies to prescribe regulations describing reasonable policies and procedures for a user ''to reconcile the address of the consumer'' about whom it has obtained a notice of address discrepancy with the CRA ''by furnishing *such* address'' to the CRA. (Emphasis added.) Even when the user is able to form a reasonable belief that it knows the identity of the consumer, there may be many reasons that the initial address furnished by the consumer is incorrect. For example, a consumer may have provided the address of a secondary residence or inadvertently reversed a street number. To ensure that the address that is furnished to the CRA is accurate, the Agencies are proposing to interpret the phrase, ''such address,'' as an address that the user has reasonably confirmed is accurate. This interpretation requires a user to take steps to ''reconcile'' the address it initially received from the consumer when it receives a notice of address discrepancy rather than simply furnishing the initial address it received to the CRA. Proposed § ____.82(d)(2) contains the following list of illustrative measures that a user may employ to reasonably confirm the accuracy of the consumer's address:

- Verifying the address with the person to whom the consumer report pertains;
- Reviewing its own records of the address provided to request the consumer report;
- Verifying the address through third-party sources; or
- Using other reasonable means.

The Agencies solicit comment on whether the regulation should include examples of measures to reasonably confirm the accuracy of the consumer's address, or whether different or additional examples should be listed.

Section ____.82(d)(3) Timing

Section 315 specifically addresses when a user must furnish the consumer's address to the CRA. It states that this information must be furnished for the reporting period in which the user's relationship with the consumer is established. Accordingly, proposed § ____.82(d)(3)(i) states that, with respect to new relationships, the policies and procedures that a user develops in accordance with § ____.82(d)(1) must provide that a user will furnish the consumer's address that it has reasonably confirmed to the CRA as part of the information it regularly furnishes for the reporting period in which it establishes a relationship with the consumer.

However, a user may also receive a notice of address discrepancy in other circumstances, such as when it requests a consumer report for a consumer with whom it already has an existing relationship. As previously noted, section 315 provides the Agencies with broad authority to prescribe regulations in all circumstances when a user has received a notice of discrepancy. Thus, proposed paragraph § ____.82(d)(3)(ii) states that in other circumstances, such as when the user already has an existing relationship with the consumer, the user should furnish this information for the reporting period in which the user has reasonably confirmed the accuracy of

[33] For example, a user may request a consumer report on a consumer with whom it already has a continuing relationship in order to determine whether to increase the consumer's credit line, or in other circumstances, such as in the case of a landlord or employer, to determine a consumer's eligibility to rent housing or for employment.

[34] Under the Red Flag Guidelines, a notice of address discrepancy received from a consumer reporting agency is a Red Flag. Thus, a user subject to the Red Flag Regulations that receives a notice of address discrepancy will need to determine whether its policies and procedures regarding identity theft prevention and mitigation apply here.

the address of the consumer for whom it has obtained a consumer report.

The Agencies recognize that the timing provision for newly established relationships may be problematic for users hoping to take full advantage of the flexibility in the timing for verification of identity afforded by the CIP rules. As required by statute, proposed § ____.82(d)(3)(i), the timing provision for new relationships, states that the reconciled address must be furnished for the reporting period in which the user establishes a relationship with the consumer. Proposed § ____.82(d)(1), which also mirrors the requirement of the statute, requires the reconciled address to be furnished to the CRA only when the user both establishes a continuing relationship with the consumer and forms a reasonable belief that it knows the identity of the consumer to whom the consumer report relates. Typically, the CIP rules permit an account to be opened (*i.e,* relationship to be established) if certain identifying information is provided. Verification to establish the true identity of the customer is required within a reasonable period of time *after* the account has been opened. However, in this context, and in order to satisfy the requirements of both § ____.82(d)(1) and § ____.82(d)(3)(i), a user employing the CIP rules will have to both establish a continuing relationship and a reasonable belief that it knows the consumer's identity during the same reporting period.

The Agencies request comment on whether the timing for responding to notices of address discrepancy received in connection with newly established relationships and in connection with circumstances other than newly established relationships is appropriate.

III. General Provisions

The OCC, the Board, the FDIC, the OTS, and the NCUA [35] are proposing to amend the first sentence in § ____.3, which contains the definitions that are applicable throughout this part. This sentence currently states that the list of definitions in § ____.3 apply throughout the part ''unless the context requires otherwise.'' These agencies are proposing to amend this introductory sentence to make clear that the definitions in § ____.3 apply ''for purposes of this part, unless explicitly stated otherwise.'' Thus, these definitions apply throughout the part unless defined differently in an individual subpart.

OTS is also proposing nonsubstantive, technical changes to its rule sections on purpose and scope (§ 571.1) and disposal of consumer information (§ 571.83). These changes are necessary in light of the proposed incorporation of the address discrepancy section into subpart I.

IV. Regulatory Analysis

A. Paperwork Reduction Act

I. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC, FDIC, OTS, NCUA, and FTC to OMB for review and approval under the Paperwork Reduction Act of 1995. The requirements are found in 12 CFR 41.82, 41.90, 41.91, 334.82, 334.90, 334.91, 571.82, 571.90, 571.91, and 717.82; 717.90; and 717.91; and 16 CFR 681.1, 681.2, and 681.3.

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the proposed rule under the authority delegated by OMB. The proposed rule contains requirements subject to the PRA. The collections of information that are required by this proposed rule are found in 12 CFR 222.82, 222.90, and 222.91. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is to be assigned.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail stop 1–5, Attention: 1557–NEW, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

Board: You may submit comments, identified by R–1255, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit written comments, which should refer to 3064–_____, by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

[35] The equivalent language for the FTC already exists in 16 CFR 603.1.

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• E-mail: *Comments@FDIC.gov.*

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments @ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.

• E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on ____,'' in the e-mail subject line.

• Fax: (703) 518–6319. Use the subject line described above for e-mail.

• Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

• Hand Delivery/Courier: Same as mail address.

FTC: Comments should refer to ''The Red Flags Rule: Project No. R611019,'' and may be submitted by any of the following methods. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [36]

• E-mail: Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-redflags* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commentworks.com/ftc-redflags.*

• Federal eRulemaking Portal: If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

• Mail or Hand Delivery: A comment filed in paper form should include ''The Red Flags Rule, Project No. R611019,'' both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[36] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

II. Proposed Information Collection

Title of Information Collection: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2002.

Frequency of Response: On occasion.

Affected Public: OCC: National banks and Federal branches and agencies of foreign banks and certain subsidiaries of these entities.

Board: State member banks, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

FDIC: Insured nonmember banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

OTS: Savings associations and certain of their subsidiaries.

NCUA: Federally-chartered credit unions.

FTC: Section 114: State-chartered credit unions, non-bank lenders, mortgage brokers, motor vehicle dealers, utility companies, telecommunications companies, and any other person that regularly participates in a credit decision, including setting the terms of credit.

Section 315: State-chartered credit unions, non-bank lenders, insurers, landlords, employers, mortgage brokers, motor vehicle dealers, collection agencies, and any other person who requests a consumer report from a nationwide consumer reporting agency as described in section 603(p) of the FCRA.

Abstract: Section 114: As required by section 114, the Agencies are jointly proposing guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity, that indicate the possible existence of identity theft. The Agencies also are proposing joint regulations requiring each financial institution and creditor to establish reasonable policies

and procedures to address the risk of identity theft that incorporate the guidelines. In addition, credit and debit card issuers must develop policies and procedures to assess the validity of a request for a change of address under certain circumstances.

The information collections in the proposed regulations implementing section 114 would require each financial institution and creditor to create an Identity Theft Prevention Program (Program) and report to the board of directors, a committee thereof or senior management at least annually on compliance with the proposed regulations. Staff must be trained to implement the Program. In addition, each credit and debit card issuer would be required to establish policies and procedures to assess the validity of a change of address request. The proposed regulations require the card issuer to notify the cardholder in writing, electronically, or orally, or use another means of assessing the validity of the change of address.

Section 315: The Agencies are proposing joint regulations under section 315 that provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency.

The information collections in the proposed regulations implementing section 315 would require each user of consumer reports to develop reasonable policies and procedures that it will employ when it receives a notice of address discrepancy from a consumer reporting agency. The proposed regulations require a user of consumer reports to furnish an address that the user has reasonably confirmed is accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

Estimated Burden:[37] *Section 114:* The Agencies estimate that it will initially take financial institutions and creditors 25 hours to create the Program outlined in the proposed rule, 4 hours to prepare an annual report, and 2 hours to train staff to implement the Program.

The Agencies estimate that it will take credit and debit card issuers 4 hours to develop policies and procedures to assess the validity of a change of address request.

The Agencies believe that most of the covered entities already employ a variety of measures to detect and address identity theft that are required by section 114 of the proposed regulations because these are usual and customary business practices that they engage in to minimize losses due to fraud. In addition, the Agencies believe that many financial institutions and creditors already have implemented some of the requirements of the proposed regulations implementing section 114 as a result of having to comply with other existing regulations and guidance, such as the regulations implementing section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l),[38] the Information Security Standards that implement section 501(b) of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801, and section 216 of the FACT Act, 15 U.S.C. 1681w,[39] and guidance issued by the Agencies or the Federal Financial Institutions Examination Council regarding information security, authentication, identity theft, and response programs.[40] The Agencies also believe that card issuers already assess the validity of change of address requests, and for the most part, have automated the process of notifying the cardholder or using other means to assess the validity of changes of address. Therefore implementation of this requirement will pose no further burden. Accordingly, these estimates represent the incremental amount of time the Agencies believe it will take to create a written Program that incorporates the policies and procedures that covered entities are likely to already have in place, the incremental time to train staff to implement the Program, to establish policies and procedures to assess the validity of changes of address, and to notify cardholders, as appropriate.

Section 315: The Agencies estimate that it will take users of consumer reports 4 hours to develop policies and procedures that they will employ when they receive a notice of address discrepancy. The Agencies believe that users of credit reports covered by this analysis already are furnishing this information to consumer reporting agencies because it is a usual and customary business practice. Therefore, the Agencies estimate that there will be no implementation burden.

Thus, the burden associated with this collection of information may be summarized as follows.

OCC

Number of respondents: 2,100.
Estimated time per response: 39.
Developing program: 25.
Preparing annual report: 4.
Training: 2.
Developing policies and procedures to assess validity of changes of address: 4.
Developing policies and procedures to respond to notices of address discrepancy: 4.
Total estimated annual burden: 81,900.

Board

Number of respondents: 1,182.
Estimated time per response: 39 hours.
Developing program: 25 hours.
Preparing annual report: 4 hours.
Training: 2 hours.
Developing policies and procedures to assess validity of changes of address: 4 hours.
Developing policies and procedures to respond to notices of address discrepancy: 4 hours.
Total Estimated Annual Burden: 46,098.

FDIC

Number of respondents: 5,245.
Estimated time per response: 39 hours.
Developing program: 25 hours.
Preparing annual report: 4 hours.
Training: 2 hours.
Developing policies and procedures to assess validity of changes of address: 4 hours.

[37] The Estimated Burden section reflects the views of all of the Agencies except the FTC, which has prepared a separate analysis.

[38] *See, e.g.*, 31 CFR 103.121 (banks, savings associations, credit unions, and certain non-federally regulated banks); 31 CFR 103.122 (broker-dealers); 31 CFR 103.123 (futures commission merchants).

[39] 12 CFR part 30, app. B (national banks); 12 CFR part 208, app. D–2 and part 225, app. F (state member banks and holding companies); 12 CFR part 364, app. B (state non-member banks); 12 CFR part 570, app. B (savings associations); 12 CFR part 748, app. A and B, and 12 CFR 717 (credit unions); 16 CFR part 314 (financial institutions that are not regulated by the Board, FDIC, NCUA, OCC and OTS).

[40] *See, e.g.*, 12 CFR part 30, supp. A to app. B (national banks); 12 CFR part 208, supp. A to app. D–2 and part 225, supp. A to app. F (state member banks and holding companies); 12 CFR part 364, supp. A to app. B (state non-member banks); 12 CFR part 570, supp. A to app. B (savings associations); 12 CFR 748, app. A and B (credit unions); Federal Financial Institutions Examination Council (FFIEC) Information Technology Examination Handbook's Information Security Booklet (the ''IS Booklet'') *available at http://www.ffiec.gov/guides.htm*; FFIEC ''Authentication in an Internet Banking Environment'' *available at http://www.ffiec.gov/pdf/authentication_guidance.pdf*; Board SR 01–11 (Supp) (Apr. 26, 2001) *available at: http://www.federalreserve.gov/boarddocs/srletters/2001/sr0111.htm*; ''Guidance on Identity Theft and Pretext Calling,'' OCC AL 2001–4 (April 30, 2001); ''Identity Theft and Pretext Calling,'' OTS CEO Letter #139 (May 4, 2001); NCUA Letter to Credit Unions 01–CU–09, ''Identity Theft and Pretext Calling'' (Sept. 2001); OCC 2005–24, ''Threats from Fraudulent Bank Web Sites: Risk Mitigation and Response Guidance for Web Site Spoofing Incidents,'' (July 1, 2005); ''Phishing and E-mail Scams,'' OTS CEO Letter #193 (Mar. 8, 2004); NCUA Letter to Credit Unions 04–CU–12, ''Phishing Guidance for Credit Unions'' (Sept. 2004).

Developing policies and procedures to respond to notices of address discrepancy: 4 hours.

Total Estimated Annual Burden: 204,555 hours.

OTS

Number of respondents: 858.

Estimated time per response: 39 hours.

Developing program: 25 hours.

Preparing annual report: 4 hours.

Training: 2 hours.

Developing policies and procedures to assess validity of changes of address: 4 hours.

Developing policies and procedures to respond to notices of address discrepancy: 4 hours.

Total Estimated Annual Burden: 33,462.

NCUA

Number of respondents: 5,393.

Estimated time per Response: 39 hours.

Developing program: 25 hours.

Preparing annual report: 4 hours.

Training: 2 hours.

Developing policies and procedures to assess validity of changes of address: 4 hours.

Developing policies and procedures to respond to notice of address discrepancy: 4 hours.

Total Estimated Annual Burden: 210,327.

FTC[41]

Section 114: Estimated Hours Burden: As discussed above, the proposed regulations would require financial institutions and creditors to create a Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the proposed regulations. The FCRA defines ''creditor'' to have the same meaning as in section 702 of the ECOA.[42] Under Regulation B, which implements the ECOA, a creditor means a person who regularly participates in a credit decision, including setting the terms of credit. Regulation B defines credit as a transaction in which the party has a right to defer payment of a debt, regardless of whether the credit is for personal or commercial purposes.[43] Given the broad scope of entities covered, it is difficult to determine precisely the number of financial institutions and creditors that are subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the proposed regulations implementing section 114 will affect over 3500 financial institutions[44] and over 11 million creditors[45] subject to the FTC's jurisdiction, for a combined total of approximately 11.1 million affected entities. As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 6,279,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $134,621,000 (rounded to the nearest thousand).

FTC staff believes that the affected entities can be categorized in two groups, based on the nature of their businesses: Entities that are subject to a high risk of identity theft and entities that are subject to a low risk of identity theft.[46] Moreover, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practices, already take steps to minimize losses due to fraud. Furthermore, FTC staff believes that motor vehicle dealers would incur less burden than other high-risk entities. Because their loans are typically financed by financial institutions that are also subject to these proposed regulations, FTC staff believes that motor vehicle dealers are likely to use the financial institutions' programs as a basis for developing their own programs. Accordingly, FTC staff estimates that to create and implement a written Program that incorporates the policies and procedures that high-risk entities already are likely to have in place, it will take high-risk entities (excluding motor vehicle dealers) 25 hours, with an annual recurring burden of 1 hour, and it will take motor vehicle dealers 5 hours, with an annual recurring burden of 1 hour. FTC staff also estimates that the incremental time to train staff to implement the Program will take high-risk entities (including motor vehicle dealers) 2 hours, with an annual recurring burden of 1 hour. Finally, FTC staff estimates that preparation of an annual report will take high-risk entities (including motor vehicle dealers) 4 hours, with an annual recurring burden of 1 hour.

FTC staff assumes that most of the low-risk entities do not employ currently the measures to detect and address identity theft that are required by section 114 of the proposed regulations. However, the proposed regulations are drafted in a flexible manner that allows entities to develop and implement different types of programs based upon their size, complexity, and the nature and scope of their activities. Moreover, the emphasis of the written Program, as required under the proposed regulations, is to identify risks of identity theft. To the extent that entities determine that they have a minimal risk of identity theft, they would be tasked only with developing a streamlined Program. As a result, FTC staff anticipates that the burden on low-risk entities to comply with the proposed regulations will be minimal. Accordingly, FTC staff believes that to create a streamlined Program, it will take low-risk entities 20 minutes, with an annual recurring burden of 5 minutes. The FTC staff believes that training staff to be attentive to any future risks of identity theft will take low-risk entities 10 minutes, with an annual recurring burden of 5 minutes. The FTC staff believes that preparing an annual report will take low-risk entities 10 minutes, with an annual recurring burden of 5 minutes.

Accordingly, FTC staff estimates that the proposed regulations implementing section 114 affect the following: 93,487 high-risk entities (excluding motor vehicle dealers) subject to the FTC's jurisdiction at an average annual burden of 12 hours and 20 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of Program ((25 + 1 + 1)/3) plus average annual burden over 3-year clearance period for staff training ((2 + 1 + 1)/3) plus average annual

[41] Due to the varied nature of the entities subject to the jurisdiction of the FTC, this Estimated Burden section reflects only the view of the FTC. The banking regulatory agencies have jointly prepared a separate analysis.

[42] 15 U.S.C. 1681a(r)(5).

[43] Regulation B Equal Credit Opportunity, 12 CFR 202 (as amended effective April 15, 2003).

[44] Under the FCRA, the only financial institutions over which the FTC has jurisdiction are state-chartered credit unions. 15 U.S.C. 1681s. As of December 31, 2005, there were 3,302 state-chartered federally-insured credit unions and 362 state-chartered nonfederally insured credit unions, totaling 3,664 financial institutions. See *http://www.ncua.gov/news/quick_facts/quick_facts.html* and ''Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA),'' 70 FR 12823 (March 16, 2005).

[45] This estimate is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers or other businesses, which totaled 11,076,463 creditors subject to the FTC's jurisdiction.

[46] In general, high-risk entities may provide consumer financial services or other goods or services of value to identity thieves such as telecommunication services or goods that are easily convertible to cash, whereas low-risk entities may do business primarily with other businesses and provide non-financial services or goods that are not easily convertible to cash.

burden over 3-year clearance period for preparing annual report ((4 + 1 + 1)/3)], for a total of 1,153,000 hours (rounded to the nearest thousand); 173,115 motor vehicle dealers subject to the FTC's jurisdiction at an average annual burden of 5 hours and 40 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of Program ((5+1+1)/3) plus average annual burden over 3-year clearance period for staff training ((2 + 1 + 1)/3) plus average annual burden over 3-year clearance period for preparing annual report ((4 + 1 + 1)/3)], for a total of 981,000 hours (rounded to the nearest thousand); and 10,813,525 low-risk entities subject to the FTC's jurisdiction at an average annual burden of approximately 23 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of streamlined Program ((20 + 5 + 5)/3) plus average annual burden over 3-year clearance period for staff training ((10+5+5)/3) plus average annual burden over 3-year clearance period for preparing annual report ((10 + 5 + 5)/3], for a total of 4,145,000 hours (rounded to the nearest thousand).

The FTC requests comment on whether the proposed regulations are sufficiently flexible to minimize the burden of compliance on entities that are not subject to a significant risk of identity theft. If not, are there ways in which the burden for such entities could be minimized further? If so, what are the ways in which the burden could be minimized further?

The proposed regulations implementing Section 114 also require credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff believes that there may be as many as 3,764 credit or debit card issuers under the FTC's jurisdiction.[47] FTC staff estimates that most of the credit or debit card issuers are high-risk entities that already have automated the process of notifying the cardholder or using other means to assess the validity of the change of address, such that implementation will pose no further burden. Nevertheless, in order to be conservative, FTC staff estimates that it will take 100 credit or debit card issuers 4 hours to develop and implement policies and procedures to assess the validity of a change of address request for a total burden of 400 hours.

Estimated Cost Burden: FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of management and/or technical staff among companies of different sizes. In calculating the cost figures, staff assumes that for high-risk entities, professional technical personnel and/or managerial personnel will create and implement the Program, prepare the annual report, train employees, and assess the validity of a change of address request, at an hourly rate of $32.00.[48] Staff assumes that for low-risk entities, administrative support personnel will justify the low-risk of identity theft, prepare the annual report, and train employees, at an hourly rate of $16.00.[49]

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the proposed regulations implementing section 114 are $134,621,000 (rounded to the nearest thousand) [((1,153,000 hours + 400 hours + 981,000 hours) × $32.00 = $68,301,000) + (4,145,000 hours × $16.00 = $66,320,000)].

Section 315: Estimated Hours Burden: User Policies and Procedures: As discussed above, the regulations implementing section 315 provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency. Given the broad scope of users of consumer reports, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. As noted above, there are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the proposed regulations implementing section 315 will affect approximately 1.6 million users of consumer reports subject to the FTC's jurisdiction.[50] As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 831,000 hours (rounded to the nearest thousand). The estimated annual labor cost associated with this burden is $13,296,000 (rounded to the nearest thousand).

Although Section 315 created a new obligation for consumer reporting agencies to provide a notice of address discrepancy to users of consumer reports, prior to FACTA's enactment, users of consumer reports could compare the address on the consumer report to the address provided by the consumer and discern for themselves any discrepancy. As a result, FTC staff believes that many users of consumer reports have developed methods of reconciling address discrepancies, and the following estimates represent the incremental amount of time it will take users of consumer reports to develop and comply with the policies and procedures for when they receive a notice of address discrepancy.

Due to the varied nature of the entities under the jurisdiction of the FTC, it is difficult to determine the appropriate burden estimates. For example, users of consumer reports can range from a landlord renting a single unit who may use no more than one consumer report a year, to insurance companies that may use thousands of consumer reports a year. FTC staff estimates that it may take a small user no more than 16 minutes to develop and comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a large user may take 1 hour. Similarly, FTC staff estimates that, during the remaining two years of the clearance, it may take a small user no more than 1 minute to comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a large user may take 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year of the clearance, it will take users of consumer reports under the jurisdiction of the FTC an average of 40 minutes [the midrange between 16 minutes and 60 minutes is approximately 38 minutes rounded to 40 minutes] to develop and comply with the policies and procedures that they

[47] In addition to the 3,664 state-chartered credit unions under FTC jurisdiction (see supra), there may be other creditors that issue their own credit cards. FTC staff is unable to determine how many such creditors exist, but estimates that there may be as many as 100. FTC staff requests comment on the number of such creditors in existence.

[48] The cost is derived from a mid-range among the reported 2004 Bureau of Labor Statistics (BLS) rates for likely positions within the professional technical and managerial categories.

[49] The cost is derived from a mid-range among the reported 2004 BLS rates for likely positions within the administrative support category.

[50] This estimate is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses in industries that typically use consumer reports from consumer reporting agencies described in section 603(p), which totaled 1,658,758 users of consumer reports subject to the FTC's jurisdiction.

will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden during the remaining two years of the clearance period will be 25 minutes [the midrange between 1 minute and 45 minutes is approximately 23 minutes rounded to 25 minutes].

Furnishing Correct Addresses: The proposed regulations implementing section 315 also require a user of consumer reports to furnish an address that the user has reasonably confirmed is accurate to the consumer reporting agency from which it receives a notice of address discrepancy, but only to the extent that such user regularly and in the ordinary course of business furnishes information to such consumer reporting agency. FTC staff believes that only 10,000 of the 1,658,758 users of consumer reports furnish information to consumer reporting agencies as part of their usual and customary business practices,[51] therefore, only these 10,000 users of consumer reports will be affected by the portion of the proposed regulations that require furnishing the correct address. FTC staff estimates that it will take such users of consumer reports 30 minutes to develop the policies and procedures for furnishing the correct address to the consumer reporting agencies pursuant to the proposed regulations for implementing section 315. FTC staff believes that users of consumer reports that furnish information to consumer reporting agencies as part of their usual and customary business practices will have automated the process of furnishing the correct address in the first year of the clearance, therefore, there will be no annual recurring burden.

Accordingly, FTC staff estimates that the proposed regulations implementing section 315 affect 1,658,758 users of consumer reports subject to the FTC's jurisdiction that must develop policies and procedures that they will employ when they receive a notice of address discrepancy, at an average annual burden of 30 minutes per entity [average annual burden over 3-year clearance period = (40 + 25 + 25)/3)], for a total of approximately 829,000 hours (rounded to the nearest thousand). The 10,000 of those users described above must also furnish the correct address to the consumer reporting agency, at an average annual burden of 10 minutes per entity [average annual burden over 3-year clearance period = ((30 + 0 + 0)/3)], for a total of 2,000 hours (rounded to the nearest thousand).

Estimated Cost Burden: FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of different types of support staff among companies of different sizes, as well as users of consumer reports with no employees. Nonetheless, in calculating the cost figures, staff assumes that the policies and procedures for notice of address discrepancy and furnishing the correct address will be set up by administrative support personnel at an hourly rate of $16.00.[52]

Based on the above estimates and assumptions, the total annual labor costs for the two categories of burden under the proposed regulations implementing section 315 are $13,296,000 (rounded to the nearest thousand) [(829,000 hours + 2,000 hours) × $16.00].

B. Regulatory Flexibility Act

OCC: When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), requires the agency to publish an initial regulatory flexibility analysis unless the agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' [53] 5 U.S.C. 603, 605(b). The OCC has reviewed the impact of the proposed regulations on small banks and certifies that that proposed regulations, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

The proposed rulemaking implements sections 114 and 315 of the FACT Act and applies to all national banks, Federal branches and agencies and their operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act,[54] 1,011 of which have assets of less than or equal to $165 million.

The proposed regulations implementing section 114 require the development and establishment of a written identity theft prevention program to detect, prevent, and mitigate identity theft. The proposed regulations also require card issuers to assess the validity of a notice of address change under certain circumstances.

The OCC believes that the requirements in the proposed regulations implementing section 114 of the FACT Act are consistent with banks' usual and customary business practices used to minimize losses due to fraud in connection with new and existing accounts. Banks also are likely to have implemented most of the proposed requirements as a result of having to comply with other existing regulations and guidance. For example, national banks are already subject to CIP rules requiring them to verify the identity of a person opening a new account.[55] A covered entity may use the policies and procedures developed to comply with the CIP rules to satisfy the identity verification requirements in the proposed rules.

National banks complying with the ''Interagency Guidelines Establishing Information Security Standards'' [56] and guidance recently issued by the FFIEC titled ''Authentication in an Internet Banking Environment'' [57] already will have policies and procedures in place to detect attempted and actual intrusions into customer information systems. Banks complying with the OCC's ''Guidance on Identity Theft and Pretext Calling'' [58] already will have policies and procedures to verify the validity of change of address requests on existing accounts.

In addition, the flexibility incorporated into the proposed rulemaking provides a covered entity with discretion to design and implement a program that is tailored to its size and complexity and the nature and scope of its operations. In this regard, the OCC believes that expenditures associated with establishing and implementing an identity theft prevention program will be commensurate with the size of the bank.

The OCC believes that the proposed regulations implementing section 114, if adopted as proposed, will not impose undue costs on national banks and will not have a substantial economic impact on a substantial number of small national banks. Nonetheless, the OCC specifically requests comment and specific data on the size of the incremental burden creating an identity theft prevention program would have on small national banks, given banks'

[51] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions of 2003, Federal Trade Commission, 80 (Dec. 2004) available at *http://www.ftc.gov/reports/facta/041209factarpt.pdf.*

[52] As noted above, the cost is derived from a mid-range among the reported 2004 BLS rates for likely positions within the administrative support category.

[53] Small Business Administration regulations define ''small entities'' to include banks with total assets of $165 million or less. 13 CFR 121.201.

[54] For convenience, these entities are referred to as ''national banks.''

[55] 31 CFR 103.121; 12 CFR 21.21 (national banks).

[56] 12 CFR part 30, app. B (national banks).

[57] OCC Bulletin 2005–35 (Oct. 12, 2005).

[58] OCC AL 2001–4 (April 30, 2001).

current practices and compliance with existing requirements. The OCC also requests comment on how the final regulations might minimize any burden imposed to the extent consistent with the requirements of the FACT Act.

The regulations implementing section 315 require users of consumer reports to have various policies and procedures to respond to the receipt of an address discrepancy. The FACT Act already requires CRAs to provide notices of address discrepancy to users of credit reports. The OCC understands that as a matter of good business practice, most national banks currently have policies and procedures in place to respond to these notices when they are provided in connection with both new and existing accounts, by furnishing an address for the consumer that the bank has reasonably confirmed is accurate to the CRA from which it received the notice of address discrepancy. In addition, with respect to new accounts, a national bank already is required by the CIP rules to ensure that it knows the identity of a person opening a new account and to keep a record describing the resolution of any substantive discrepancy discovered during the verification process.

Given current practices of national banks in responding to notices of address discrepancy from CRAs, and the existing requirements in the CIP rule, the OCC believes that the proposed regulations implementing section 315, if adopted as proposed, will not impose undue costs on national banks and likely will not have a significant economic impact on a substantial number of national banks. Nonetheless, the OCC specifically requests comment on whether the proposed requirements differ from small banks' current practices and whether the proposed requirements on users of consumer reports to have policies and procedures to respond to the receipt of an address discrepancy could be altered to minimize any burden imposed to the extent consistent with the requirements of the FACT Act.

Board: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include commercial banks and other depository institutions with less than $165 million in assets).

A. Reasons for the Proposed Rule

The FACT Act amends the FCRA and was enacted, in part, for the purpose of preventing the theft of consumer information. The statute contains several provisions relating to the detection, prevention, and mitigation of identity theft. The Board is proposing rules to implement statutory directives in section 114 of the FACT Act, which amends section 615 of the FCRA, and section 315 of the FACT Act, which amends section 605 of the FCRA, that require the Board to prescribe regulations jointly with other federal agencies.

Section 114 requires the Board to prescribe regulations that require financial institutions and creditors to establish policies and procedures to implement guidelines established by the Board that address identity theft with respect to account holders and customers. Section 114 also requires the Board to adopt regulations applicable to credit and debit card issuers to implement policies and procedures to assess the validity of change of address requests. Section 315 requires the Board to prescribe regulations that provide guidance regarding reasonable policies and procedures that a user of consumers' reports should employ to verify the identity of a consumer when a consumer reporting agency provides a notice of address discrepancy relating to that consumer.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains information on the objectives of the final rules. The legal bases for the proposed rules are sections 114 and 315 of the FACT Act.

C. Description of Small Entities To Which the Rule Applies

The Board's proposed rule would apply to all banks that are members of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*). The Board's rule would apply to the following institutions (numbers approximate): State member banks (902), U.S. branches and agencies of foreign banks (206), commercial lending companies owned or controlled by foreign banks (3), and Edge and agreement corporations (71), for a total of approximately 1,182 institutions. The Board estimates that more than 550 of these institutions could be considered small institutions with assets less than $165 million.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Section 114 requires the Board to prescribe regulations that require financial institutions and creditors to establish reasonable policies and procedures to implement guidelines established by the Board and other federal agencies that address identity theft with respect to account holders and customers. This would be implemented by requiring a covered financial institution or creditor to create an Identity Theft Prevention Program that detects, prevents and mitigates the risk of identity theft applicable to its accounts.

Section 114 also requires the Board to adopt regulations applicable to credit and debit card issuers to implement policies and procedures to assess the validity of change of address requests. The proposed rule would implement this by requiring credit and debit card issuers to establish reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a debit or credit card account and within a short period of time afterwards (at least 30 days), the issuer receives a request for an additional or replacement card for the same account.

Section 315 requires the Board to prescribe regulations that provide guidance regarding reasonable policies and procedures that a user of consumers' reports should employ to verify the identity of a consumer when a consumer reporting agency provides a notice of address discrepancy relating to that consumer and to reconcile the address discrepancy with the consumer reporting agency in certain circumstances. The proposed rule would require users of consumer reports to develop and implement reasonable policies and procedures for verifying the identity of a consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy and to reconcile an address discrepancy with the appropriate consumer reporting agency in certain circumstances.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rules in addition to or which may differ from those arising

from the application of the statute generally.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board is unable to identify any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations, that would duplicate, overlap, or conflict with the proposed rule, including particularly any statutes or regulations that address situations in which institutions must adopt specified policies and procedures to detect or prevent identity theft or mitigate identity theft that has occurred.

Section 222.90 of the Board's proposed rule would require financial institutions and creditors that are subject to the Board's rule to implement a written identity theft program that includes reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor. Many of these entities also are subject to the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (*see* 12 CFR part 208, appendix D–1) and rules of the Department of the Treasury that require these entities to implement customer identification programs (*see* 31 CFR 103.121).

Programs adopted pursuant to these requirements would include policies and procedures that would safeguard against the theft of customer information and would be considered complementary to the identity theft prevention program that would be required under § 222.90. For example, proposed § 222.90(d) would require that institutions adopt reasonable policies and procedures to, among other things, obtain identifying information about, and verify the identity of, persons opening an account. The proposed rule indicates that policies and procedures an institution has adopted under the Department of the Treasury's rules on customer identification programs would satisfy this requirement.

F. Discussion of Significant Alternatives

The proposed rules would require financial institutions and creditors to create an Identity Theft Prevention Program, maintain a record of the Program, and report to the board of directors, a committee of the board, or senior management at least annually on compliance with the regulations. Credit and debit card issuers would be required to assess the validity of a change of address request by notifying the cardholder or using other means to assess the validity of a change of address. Users of consumer reports would be required to furnish an address that the user has reasonably confirmed is accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

The Board welcomes comments on any significant alternatives, consistent with the mandates in section 114 and 315, that would minimize the impact of the proposed rules on small entities.

FDIC: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with less than $165 million in assets). The FDIC hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Under the proposed rule, financial institutions and creditors must have a written program that includes controls to address the identity theft risks they have identified. With respect to credit and debit card issuers, the program also must include policies and procedures to assess the validity of change of address requests. Users of consumer reports must have reasonable policies and procedures with respect to address discrepancies. The program must be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities, and be flexible to address changing identity theft risks as they arise. A financial institution or creditor may wish to combine its program to prevent identity theft with its information security program, as these programs are complementary in many ways.

The proposed rule would apply to all FDIC-insured state nonmember banks, approximately 3,400 of which are small entities. The proposed rule is drafted in a flexible manner that allows institutions to develop and implement different types of programs based upon their size, complexity, and the nature and scope of their activities. The proposed rule would also permit institutions to modify existing information security programs to address identity theft. The FDIC also believes that many institutions have already implemented a significant portion of the detection and mitigation efforts required by the proposed rule.

OTS: When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), requires the agency to publish an initial regulatory flexibility analysis unless the agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' [59] 5 U.S.C. 603, 605(b). OTS has reviewed the impact of the proposed regulations on small savings associations and certifies that that proposed regulations, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

The proposed rulemaking would implement sections 114 and 315 of the FACT Act and would apply to all savings associations (and federal savings association operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act),[60] 446 of which have assets of less than or equal to $165 million.

The proposed regulations implementing section 114 would require the development and establishment of a written identity theft prevention program to detect, prevent, and mitigate identity theft. The proposed regulations also would require card issuers to assess the validity of a notice of address change under certain circumstances.

OTS believes that the proposed requirements implementing section 114 of the FACT Act would be consistent with savings associations' usual and customary business practices used to minimize losses due to fraud in connection with new and existing accounts. Savings associations also are likely to have implemented most of the proposed requirements as a result of having to comply with other existing regulations and guidance. For example, savings associations are already subject to CIP rules requiring them to verify the identity of a person opening a new account.[61] A covered entity may use the policies and procedures developed to comply with the CIP rules to satisfy the identity verification requirements in the proposed rules.

Savings associations complying with the ''Interagency Guidelines Establishing Information Security

[59] Small Business Administration regulations define ''small entities'' to include savings associations with total assets of $165 million or less. 13 CFR 121.201.

[60] For convenience, these entities are referred to as ''savings associations.''

[61] 31 CFR 103.121; 12 CFR 563.177 (savings associations).

Standards'' [62] and guidance recently issued by the FFIEC titled ''Authentication in an Internet Banking Environment'' [63] already will have policies and procedures in place to detect attempted and actual intrusions into customer information systems. Savings associations complying with OTS's guidance on ''Identity Theft and Pretext Calling'' [64] already will have policies and procedures to verify the validity of change of address requests on existing accounts.

In addition, the flexibility incorporated into the proposed rulemaking provides a covered entity with discretion to design and implement a program that is tailored to its size and complexity and the nature and scope of its operations. In this regard, OTS believes that expenditures associated with establishing and implementing a program would be commensurate with the size of the savings associations.

OTS believes that the proposed regulations implementing section 114 would not impose undue costs on savings associations and likely would have a minimal economic impact on small savings associations. Nonetheless, OTS specifically requests comment and specific data on the size of the incremental burden creating a program would have on small savings associations, given their current practices and compliance with existing requirements. OTS also requests comment on how the final regulations might minimize any burden imposed to the extent consistent with the requirements of the FACT Act.

The proposed regulations implementing section 315 would require users of consumer reports to have various policies and procedures to respond to the receipt of an address discrepancy. The FACT Act already requires CRAs to provide notices of address discrepancy to users of credit reports. OTS understands that as a matter of good business practice, most savings associations currently have policies and procedures in place to respond to these notices when they are provided in connection with both new and existing accounts, by furnishing an address for the consumer that the savings association has reasonably confirmed is accurate to the CRA from which it received the notice of address discrepancy. In addition, with respect to new accounts, a savings association already is required by the CIP rules to ensure that it knows the identity of a person opening a new account and to keep a record describing the resolution of any substantive discrepancy discovered during the verification process.

Given current practices of savings associations in responding to notices of address discrepancy from CRAs, and the existing requirements in the CIP rule, OTS believes that the proposed regulations implementing section 315 would not impose undue costs on savings associations and likely would have a minimal economic impact on small savings associations. Nonetheless, OTS specifically requests comment on whether the proposed requirements differ from small savings associations' current practices and how the final regulations might minimize any burden imposed to the extent consistent with the requirements of the FACT Act.

NCUA: The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $10 million in assets). The NCUA certifies the proposed rule will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

FTC: The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed regulations will have a significant economic impact on a substantial number of small entities. The Commission recognizes that the proposed regulations will affect a substantial number of small businesses. We do not expect, however, that the proposed requirements will have a significant economic impact on these small entities.

This document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed regulations will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed regulations, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the regulations proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed regulations on small entities. Therefore, the Commission has prepared the following analysis:

1. Description of the Reasons That Action by the Agency Is Being Taken

The Federal Trade Commission is charged with enforcing the requirements of sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (15 U.S.C. 1681m(e) and 1681c(h)(2)), which require the agency to issue these proposed regulations.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

The objective of the proposed regulations is to establish guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity, that indicate the possible existence of identity theft. In addition, the proposed regulations require credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. They also set out requirements for policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agency described in section 603(p) of the FCRA. The legal basis for the proposed regulations is 15 U.S.C. 1681m(e) and1681c(h)(2).

3. Small Entities To Which the Proposed Rule Will Apply

The proposed regulations apply to a wide variety of business categories under the Small Business Size Standards. Generally, the proposed regulations would apply to financial institutions, creditors, and users of consumer reports. In particular, entities under FTC's jurisdiction covered by section 114 include State-chartered credit unions, non-bank lenders, mortgage brokers, automobile dealers, utility companies, telecommunications companies, and any other person that regularly participates in a credit decision, including setting the terms of credit. The section 315 requirements

[62] 12 CFR part 570, app. B (savings associations).

[63] OTS CEO Letter 228 (Oct. 12, 2005).

[64] ''Identity Theft and Pretext Calling,'' OTS CEO Letter #139 (May 4, 2001).

apply to State-chartered credit unions, non-bank lenders, insurers, landlords, employers, mortgage brokers, automobile dealers, collection agencies, and any other person who requests a consumer report from a consumer reporting agency described in section 603(p) of the FCRA.

Given the coverage of the proposed rule, a very large number of small entities across almost every industry could be subject to the Rule. For the majority of these entities, a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $6 million or who have fewer than 500 employees.[65]

Section 114: As discussed in the PRA section of this Notice, given the broad scope of section 114's requirements, it is difficult to determine with precision the number of financial institutions and creditors that are subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the proposed regulations implementing section 114 will affect over 3500 financial institutions and over 11 million creditors [66] subject to the FTC's jurisdiction, for a combined total of approximately 11.1 million affected entities. Of this total, the FTC staff expects that well over 90% of these firms qualify as small businesses under existing size standards (*i.e.*, $165 million in assets for financial institutions and $6.5 million in sales for many creditors), but requests comment on the number of small businesses that would be covered by the rule.

The proposed regulations implementing Section 114 also require credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. Indeed, the proposed regulations require credit and debit card issuers to notify the cardholder or to use another means of assessing the validity of the change of address. FTC staff believes that there may be as many as 3,764 credit or debit card issuers that fall under the jurisdiction of the FTC and that well over 90% of these firms qualify as small businesses under existing size standards (*i.e.*, $165 million in assets for financial institutions and $6.5 million in sales for many creditors), but requests comment on the number of small businesses that would be covered by the rule.

Section 315: As discussed in the PRA section of this Notice, given the broad scope of section 315's requirements, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the proposed regulations implementing section 315 will affect approximately 1.6 million users of consumer reports subject to the FTC's jurisdiction [67] and that well over 90% of these firms qualify as small businesses under existing size standards (*i.e.*, $165 million in assets for financial institutions and $6.5 million in sales for many creditors), but requests comment on the number of small businesses that would be covered by the rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed requirements will involve some increased costs for affected parties. Most of these costs will be incurred by those required to draft identity theft Programs and annual reports. There will also be costs associated with training, and for credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. In addition, there will be costs related to developing reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency, and for furnishing an address that the user has reasonably confirmed is accurate The Commission does not expect, however, that the increased costs associated with proposed regulations will be significant as explained below.

Section 114: The FTC staff estimates that there may be as many as 90% of the businesses affected by the proposed rules under section 114 that are subject to a high-risk of identity theft that qualify as small businesses, but staff requests comment on the number of small businesses that would be affected. It is likely that such entities already engage in various activities to minimize losses due to fraud as part of their usual and customary business practices. Accordingly, the impact of the proposed requirements would be merely incremental and not significant. In particular, the rule will direct many of these entities to consolidate their existing policies and procedures into a written Program and may require some additional staff training.

The FTC expects that well over 90% of the businesses affected by the proposed rules under section 114 that are subject to a low risk of identity theft qualify as small businesses under existing size standards (*i.e.*, $165 million in assets for financial institutions and $6.5 million in sales for many creditors), but the staff requests comment on the number of small businesses that would be covered by the rule. As discussed in the PRA section of this Notice, it is unlikely that such low-risk entities employ the measures to detect and address identity theft. Nevertheless, the proposed requirements are drafted in a flexible manner that allows entities to develop and implement different types of programs based upon their size, complexity, and the nature and scope of their activities. As a result, the FTC staff expects that the burden on these low-risk entities will be minimal (*i.e.*, not significant). The proposed regulations would require low-risk entities that have no existing identity theft procedures to justify in writing their low-risk of identity theft, train staff to be attentive to future risks of identity theft, and prepare the annual report. The FTC staff believes that, for the affected low-risk entities, such activities will not be complex or resource-intensive tasks.

The proposed regulations implementing Section 114 also require credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request. It is likely that most of the entities have automated the process of notifying the cardholder or using other means to assess the validity of the change of address such that implementation will pose no further burden. For those that do not, the FTC staff expects that a small number of such entities (100) will need to develop policies and procedures to assess the validity of a change of

[65] These numbers represent the size standards for most retail and service industries ($6 million total receipts) and manufacturing industries (500 employees). A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/summary-whatis.html*.

[66] This estimate is derived from census data of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers and businesses. 2003 County Business Patterns, U.S. Census Bureau (*http://censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl*); and 2002 Economic Census Bureau (*http://www.census.gov/econ/census02/*).

[67] This estimate is derived from census data of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers and businesses. 2003 County Business Patterns, U.S. Census Bureau (*http://censtats.census.gov/cgi-bin/cbpnaic/cbpsel.pl*); and 2002 Economic Census, Bureau (*http://www.census.gov/econ/census02/*).

address request. The impacts on such entities should not be significant, however.

Section 315: The regulations implementing section 315 provide guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency. The proposed regulations also require a user of consumer reports to furnish an address that the user has reasonably confirmed is accurate to the consumer reporting agency from which it receives a notice of address discrepancy, but only to the extent that such user regularly and in the ordinary course of business furnishes information to such consumer reporting agency. The FTC staff believes that the impacts on users of consumer reports that are small businesses will not be significant. As discussed in the PRA section of this Notice, the FTC staff believes that it will not take users of consumer reports under FTC jurisdiction a significant amount of time to develop policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff believes that only 10,000 of such users of consumer reports furnish information to consumer reporting agencies as part of their usual and customary business practices and that approximately 20% of these entities qualify as small businesses. Therefore, the staff estimates that 2,000 small businesses will be affected by this portion of the proposed regulation that requires furnishing the correct address. As discussed in the PRA section of this Notice, FTC staff estimates that it will not take such users of consumer reports a significant amount of time to develop the policies and procedures for furnishing the correct address to the consumer reporting agencies pursuant to the proposed regulations for implementing section 315. The FTC staff estimates that the costs associated with these impacts will not be significant.

The Commission does not expect that there will be any significant legal, professional, or training costs to comply with the Rule. Although it is not possible to estimate small businesses' compliance costs precisely, such costs are likely to be quite modest for most small entities. Nonetheless, because the Commission is concerned about the potential impact of the proposed Rule on small entities, it specifically invites comment on the costs of compliance for such parties. In particular, although the Commission does not expect that small entities will require legal assistance to meet the proposed Rule's requirements, the Commission requests comment on whether small entities believe that they will incur such costs and, if so, what they will be. In addition, the Commission requests comment on the costs, if any, of training relevant employees regarding the proposed requirements. The Commission invites comment and information on these issues.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

6. Significant Alternatives to the Proposed Rule

The standards in the proposed Rule are flexible, and take into account a covered entity's size and sophistication, as well as the costs and benefits of alternative compliance methods. Nevertheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities, including the need, if any, to delay the rule's effective date to provide additional time for small business compliance.

If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. OCC and OTS Executive Order 12866 Determination

The OCC and the OTS each has determined that this proposed rulemaking, mandated by sections 114 and 315 of the FACT Act, is not a significant regulatory action under Executive Order 12866.

The OCC and OTS believe that national banks and savings associations, respectively, already have procedures in place that fulfill many of the requirements of the proposed regulations because they are consistent with institutions' usual and customary business practices used to minimize losses due to fraud in connection with new and existing accounts. Institutions also are likely to have implemented many of the proposed requirements as a result of complying with other existing regulations and guidance. For these reasons, and for the reasons discussed elsewhere in this preamble, the OCC and OTS each believes that the burden stemming from this rulemaking will not cause the proposed rules to be a ''significant regulatory action.''

Nevertheless, because the proposed rulemaking implements new statutory requirements, it may impose costs on some national banks and savings associations by requiring them to formalize or enhance their existing policies and procedures. Therefore, the OCC and OTS invite national banks, savings associations and the public to provide any cost estimates and related data that they think would be useful in evaluating the overall costs of this rulemaking. The OCC and OTS will review any comments and cost data provided carefully, and will revisit the cost aspects of the proposed rules in developing final rules.

D. OCC and OTS Executive Order 13132 Determination

The OCC and the OTS each has determined that this proposal does not have any federalism implications for purposes of Executive Order 13132.

E. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The proposed rule applies only to federally chartered credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

F. OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). If a budgetary impact

statement is required section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC and OTS each believes that the financial institutions subject to their jurisdiction covered by the proposed rules already have identity theft prevention programs because it is a sound business practice. In addition, key elements of the proposed rules are elements in existing regulations and guidance. Therefore, the OCC and OTS each has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, that exceed the expenditure threshold. Accordingly, neither the OCC nor OTS has prepared a budgetary impact statement or specifically addressed regulatory alternatives considered.

G. NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

H. Community Bank Comment Request

The Agencies invite your comments on the impact of this proposal on community banks. The Agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the Agencies specifically request comment on the impact of the proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed guidelines and regulations clearly stated? If not, how could the guidelines and regulations be more clearly stated?
- Do the proposed guidelines and regulations contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the guidelines and regulations easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the guidelines and regulations easier to understand?

VI. Communications by Outside Parties to FTC Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any FTC Commissioner or FTC Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

List of Subjects

12 CFR Part 41

Banks, banking, Consumer protection, National Banks, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, banking, Holding companies, state member banks.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and Soundness.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 717

Consumer protection, Credit unions, Fair credit reporting, Privacy, Reporting and recordkeeping requirements.

16 CFR Part 681

Fair Credit Reporting Act, Consumer reports, Consumer report users, Consumer reporting agencies, Credit, Creditors, Information furnishers, Identity theft, Trade practices.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of title 12 of the Code of Federal Regulations by amending 12 CFR part 41 as follows:

PART 41—FAIR CREDIT REPORTING

1. The authority citation for part 41 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 481, and 1818; 15 U.S.C. 1681c, 1681m, 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

2. Amend § 41.3 by revising the introductory text to read as follows:

§ 41.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

* * * * *

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

3. Revise the heading for Subpart I as shown above.

4. Add § 41.82 to read as follows:

§ 41.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that receive notices of address discrepancies from credit reporting agencies (referred to as ''users''), and that are national banks, Federal branches and agencies of foreign banks, and any of their operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b) *Definition.* For purposes of this section, *a notice of address discrepancy* means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it

receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

5. Add Subpart J to part 41 to read as follows:

Subpart J—Identity Theft Red Flags

§ 41.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are national banks, Federal branches and agencies of foreign banks, and any of their operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or creditor with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.* (1) *Identification and evaluation of Red Flags.* (i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix J to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding

identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances, satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags identified pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

(3) *Staff training.* Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management.* (i) *Board approval.* The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management.* The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports.* (A) *In general.* Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report.* The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 41.91 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 41.90(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to § 41.90.

(d) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

6. Reserve appendices B through I to part 41.

7. Add Appendix J to part 41 to read as follows:

Appendix J to Part 41—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as*:

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is

a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional, or replacement checks, convenience checks, cards, or a cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice from Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent website.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send, indicating that its customers may have been asked to provide information to a fraudulent website that looks very similar, if not identical, to the website of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons discussed in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend chapter II of title 12 of the Code of Federal Regulations by amending 12 CFR part 222 as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b, 1681c, 1681m and 1681s; Secs. 3, 214, and 216, Pub. L. 108–159, 117 Stat. 1952.

2. Amend § 222.3 by revising the introductory text to read as follows:

Subpart A—General Provisions

* * * * *

§ 222.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

* * * * *

3. Revise the heading for Subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

4. Add § 222.82 to read as follows:

§ 222.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that receive notices of address discrepancies from credit reporting agencies (referred to as ''users''), and that are member banks of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*).

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address.* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed

is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

5. Add Subpart J to part 222 to read as follows:

Subpart J—Identity Theft Red Flags

§ 222.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are member banks of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or creditor with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.* (1) *Identification and evaluation of Red Flags.* (i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix J to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances, satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags identified pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding

that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

(3) *Staff training.* Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management.* (i) Board approval. The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management.* The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports.* (A) *In general.* Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report.* The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 222.91 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 222.90(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to section 222.90.

(d) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

6. Reserve appendices C through I to part 222.

7. Add Appendix J to part 222 to read as follows:

Appendix J to Part 222—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as:*

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional, or replacement checks, convenience checks, cards, or a cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice From Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent website.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send, indicating that its customers may have been asked to provide information to a fraudulent website that looks very similar, if not identical, to the website of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations by amending 12 CFR parts 334 and 364 as follows:

PART 334—FAIR CREDIT REPORTING

1. The authority citation for part 334 is revised to read as follows:

Authority: 12 U.S.C. 1818 and 1819 (Tenth); 15 U.S.C. 1681b, 1681c, 1681m, 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

2. Amend § 334.3 by revising the introductory text to read as follows:

§ 334.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

* * * * *

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

3. Revise the heading for Subpart I as shown above.

4. Add § 334.82 to read as follows:

§ 334.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that receive notices of address discrepancies from credit reporting agencies (referred to as ''users''), and that are insured state nonmember banks, insured state licensed branches of foreign banks, or subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(b) *Definition.* For purposes of this section, a notice of address discrepancy means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

5. Add Subpart J to part 334 to read as follows:

Subpart J—Identity Theft Red Flags

§ 334.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are insured state nonmember banks, insured state licensed branches of foreign banks, or subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or creditor with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.* (1) *Identification and evaluation of Red Flags.* (i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix J to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances, satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags identified pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

(3) *Staff training.* Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management.* (i) *Board approval.* The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management.* The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports.* (A) *In general.* Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report.* The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 334.91 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 334.90(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to section 334.90.

(d) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

6. Reserve appendices A through I to part 334.

7. Add Appendix J to part 334 to read as follows:

Appendix J to Part 334—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as:*

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional or replacement checks, convenience checks, cards, or cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice From Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent Web site.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send, indicating that its customers may have been asked to provide information to a fraudulent Web site that looks very similar, if not identical, to the Web site of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

8. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1819(Tenth), 1831p–1; 15 U.S.C. 1681s, 1681w, 6801(b), 6805(b)(1).

9. Add the following sentence at the end of § 364.101(b):

§ 364.101 Standards for safety and soundness.

* * * * *

(b) * * * The interagency regulations and guidelines on identity theft detection, prevention, and mitigation prescribed pursuant to section 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. 1681m(e), are set forth in §§ 334.90, 334.91, and Appendix J of part 334.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of Thrift Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by amending 12 CFR part 571 as follows:

PART 571—FAIR CREDIT REPORTING

1. The authority citation for part 571 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, and 1881–1884; 15 U.S.C. 1681b, 1681c, 1681m, 1681s, and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

Subpart A—General Provisions

2. Amend § 571.1 by revising paragraph (b)(9) and adding a new paragraph (b)(10) to read as follows:

§ 571.1 Purpose and Scope.

* * * * *

(b) *Scope.*

* * * * *

(9)(i) The scope of § 571.82 of Subpart I of this part is stated in § 571.82(a).

(ii) The scope of § 571.83 of Subpart I of this part is stated in § 571.83(a).

(10) The scope of Subpart J of this part is stated in § 571.90(a).

3. Amend § 571.3 by revising the introductory text to read as follows:

§ 571.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

* * * * *

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

4. Revise the heading for Subpart I as shown above.

5. Add § 571.82 to read as follows:

§ 571.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that receive notices of address discrepancies from credit reporting agencies (referred to as ''users''), and that are either savings associations whose deposits are insured by the Federal Deposit Insurance Corporation or, in accordance with § 559.3(h)(1) of this chapter, federal savings association operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address.* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for

whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

6. Revise § 571.83 by:

a. Redesignating paragraphs (a) and (b) as paragraph (b) and (c), respectively.

b. Adding a new paragraph (a) to read as follows:

§ 571.83 Disposition of consumer information.

(a) Scope. This section applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation (and federal savings association operating subsidiaries in accordance with § 559.3(h)(1) of this chapter) (defined as ''you'' in § 571.3(o) of this part).

* * * * *

7. Add Subpart J to part 571 to read as follows:

Subpart J—Identity Theft Red Flags

§ 571.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are either savings associations whose deposits are insured by the Federal Deposit Insurance Corporation or, in accordance with § 559.3(h)(1) of this chapter, federal savings association operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or credit with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.* (1) *Identification and evaluation of Red Flags.* (i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix J to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances,

satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h) as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

(3) *Staff training*. Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements*. Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management*. (i) *Board approval*. The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management*. The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports*. (A) *In general*. Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report*. The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 571.91 Duties of card issuers regarding changes of address.

(a) *Scope*. This section applies to a person described in § 571.90(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general*. The card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to section 571.90.

(d) *Form of notice*. Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

8. Reserve appendices A through I to part 571.

9. Add Appendix J to part 571 to read as follows:

Appendix J to Part 571—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as*:

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional, or replacement checks, convenience checks, cards, or a cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice From Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent website.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send, indicating that its customers may have been asked to provide information to a fraudulent Web site that looks very similar, if not identical, to the Web site of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

National Credit Union Administration

12 CFR Part 717

Authority and Issuance

For the reasons discussed in the joint preamble, the National Credit Union Administration proposes to amend chapter VII of title 12 of the Code of Federal Regulations by amending 12 CFR part 717 as follows:

PART 717—FAIR CREDIT REPORTING

1. The authority citation for part 717 is revised to read as follows:

Authority: 15 U.S.C. 1681a, 1681c, 1681m, 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

2. Amend § 717.3 by revising the introductory text to read as follows:

§ 717.3 Definitions.

For purposes of this part, unless explicitly stated otherwise:

* * * * *

Subpart I—Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal

3. Revise the heading for Subpart I as shown above.

4. Add § 717.82 to read as follows:

§ 717.82 Duties of users regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that receive notices of address discrepancies from credit reporting agencies (referred to as ''users''), and that are Federal credit unions.

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address* (1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy

pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

5. Add Subpart J to part 717 to read as follows:

Subpart J—Identity Theft Red Flags

§ 717.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are Federal credit unions.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or creditor with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.* (1) *Identification and evaluation of Red Flags.* (i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix J to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances, satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags identified pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c-1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s-2, to correct or update inaccurate or incomplete information.

(3) *Staff training.* Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management.* (i) *Board approval.* The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management.* The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports.* (A) *In general.* Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report.* The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 717.91 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 717.90(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to section 717.90.

(d) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

6. Reserve appendices A through I to part 717.

7. Add Appendix J to part 717 to read as follows:

Appendix J to Part 717—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as:*

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional, or replacement checks, convenience checks, cards, or a cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice From Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent Web site.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send, indicating that its customers may have been asked to provide information to a fraudulent Web site that looks very similar, if not identical, to the Web site of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

Federal Trade Commission

16 CFR Part 681

For the reasons discussed in the joint preamble, the Commission proposes to add part 681 of title 16 of the Code of Federal Regulations as follows:

PART 681—IDENTITY THEFT RULES

Sec.

Authority: Pub. L. 108–159, sec 114 and sec 315; 15 U.S.C. 1681m(e) and 15 U.S.C. 1681c(h).

§ 681.1 Duties of users of consumer reports regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1) (referred to as ''users'').

(b) *Definition.* For purposes of this section, a *notice of address discrepancy* means a notice sent to a user of a consumer report by a consumer reporting agency pursuant to 15 U.S.C. 1681c(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency's file for the consumer.

(c) *Requirement to form a reasonable belief.* A user must develop and implement reasonable policies and procedures for verifying the identity of the consumer for whom it has obtained a consumer report and for whom it receives a notice of address discrepancy. These policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or determine that it cannot do so. A user that employs the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) under these circumstances satisfies this requirement, whether or not the user is subject to the CIP rules.

(d) *Consumer's address*

(1) *Requirement to furnish consumer's address to a consumer reporting agency.* A user must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy when the user:

(i) Can form a reasonable belief that it knows the identity of the consumer for whom the consumer report was obtained;

(ii) Establishes or maintains a continuing relationship with the consumer; and

(iii) Regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of address discrepancy pertaining to the consumer was obtained.

(2) *Requirement to confirm consumer's address.* The user may reasonably confirm an address is accurate by:

(i) Verifying the address with the person to whom the consumer report pertains;

(ii) Reviewing its own records of the address provided to request the consumer report;

(iii) Verifying the address through third-party sources; or

(iv) Using other reasonable means.

(3) *Timing.* The policies and procedures developed in accordance with paragraph (d)(1) of this section must provide that the user will furnish the consumer's address that the user has reasonably confirmed is accurate to the consumer reporting agency as part of the information it regularly furnishes:

(i) With respect to new relationships, for the reporting period in which it establishes a relationship with the consumer; and

(ii) In other circumstances, for the reporting period in which the user confirms the accuracy of the address of the consumer.

§ 681.2 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Purpose and scope.* This section implements section 114 of the Fair and Accurate Credit Transactions Act, 15 U.S.C. 1681m, which amends section 615 of the Fair Credit Reporting Act (FCRA). It applies to financial institutions and creditors that are subject to administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. 1681s(a)(1).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Account* means a continuing relationship established to provide a financial product or service that a

financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act, 12 U.S.C. 1843(k). Account includes:

(i) An extension of credit for personal, family, household or business purposes, such as a credit card account, margin account, or retail installment sales contract, such as a car loan or lease; and

(ii) A demand deposit, savings or other asset account for personal, family, household, or business purposes, such as a checking or savings account.

(2) The term *board of directors* includes:

(i) In the case of a foreign branch or agency of a foreign bank, the managing official in charge of the branch or agency; and

(ii) In the case of any other creditor that does not have a board of directors, a designated employee.

(3) *Customer* means a person that has an account with a financial institution or creditor.

(4) *Identity theft* has the same meaning as in 16 CFR 603.2(a).

(5) *Red Flag* means a pattern, practice, or specific activity that indicates the possible risk of identity theft.

(6) *Service provider* means a person that provides a service directly to the financial institution or creditor.

(c) *Identity Theft Prevention Program.* Each financial institution or creditor must implement a written Identity Theft Prevention Program (Program). The Program must include reasonable policies and procedures to address the risk of identity theft to its customers and the safety and soundness of the financial institution or creditor, including financial, operational, compliance, reputation, and litigation risks, in the manner discussed in paragraph (d) of this section. The Program must be:

(1) Appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities; and

(2) Designed to address changing identity theft risks as they arise in connection with the experiences of the financial institution or creditor with identity theft, and changes in methods of identity theft, methods to detect, prevent, and mitigate identity theft, the types of accounts it offers, and business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(d) *Development and implementation of Program.*

(1) *Identification and evaluation of Red Flags.*

(i) *Risk-based Red Flags.* The Program must include policies and procedures to identify Red Flags, singly or in combination, that are relevant to detecting a possible risk of identity theft to customers or to the safety and soundness of the financial institution or creditor, using the risk evaluation set forth in paragraph (d)(1)(ii) of this section. The Red Flags identified must reflect changing identity theft risks to customers and to the financial institution or creditor as they arise. At a minimum, the Program must incorporate any relevant Red Flags from:

(A) Appendix A to this part;

(B) Applicable supervisory guidance;

(C) Incidents of identity theft that the financial institution or creditor has experienced; and

(D) Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks.

(ii) *Risk evaluation.* In identifying which Red Flags are relevant, the financial institution or creditor must consider:

(A) Which of its accounts are subject to a risk of identity theft;

(B) The methods it provides to open these accounts;

(C) The methods it provides to access these accounts; and

(D) Its size, location, and customer base.

(2) *Identity theft prevention and mitigation.* The Program must include reasonable policies and procedures designed to prevent and mitigate identity theft in connection with the opening of an account or any existing account, including policies and procedures to:

(i) Obtain identifying information about, and verify the identity of, a person opening an account. A financial institution or creditor that uses the policies and procedures regarding identification and verification set forth in the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l), under these circumstances, satisfies this requirement whether or not the user is subject to the CIP rules;

(ii) Detect the Red Flags identified pursuant to paragraph (d)(1) of this section;

(iii) Assess whether the Red Flags detected pursuant to paragraph (d)(2)(ii) of this section evidence a risk of identity theft. An institution or creditor must have a reasonable basis for concluding that a Red Flag does not evidence a risk of identity theft; and

(iv) Address the risk of identity theft, commensurate with the degree of risk posed, such as by:

(A) Monitoring an account for evidence of identity theft;

(B) Contacting the customer;

(C) Changing any passwords, security codes, or other security devices that permit access to a customer's account;

(D) Reopening an account with a new account number;

(E) Not opening a new account;

(F) Closing an existing account;

(G) Notifying law enforcement and, for those that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;

(H) Implementing any requirements regarding limitations on credit extensions under 15 U.S.C. 1681c–1(h), such as declining to issue an additional credit card when the financial institution or creditor detects a fraud or active duty alert associated with the opening of an account, or an existing account; or

(I) Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s–2, to correct or update inaccurate or incomplete information.

(3) *Staff training.* Each financial institution or creditor must train staff to implement its Program.

(4) *Oversight of service provider arrangements.* Whenever a financial institution or creditor engages a service provider to perform an activity on its behalf and the requirements of its Program are applicable to that activity (such as account opening), the financial institution or creditor must take steps designed to ensure that the activity is conducted in compliance with a Program that meets the requirements of paragraphs (c) and (d) of this section.

(5) *Involvement of board of directors and senior management.* (i) *Board approval.* The board of directors or an appropriate committee of the board must approve the written Program.

(ii) *Oversight by board or senior management.* The board of directors, an appropriate committee of the board, or senior management must oversee the development, implementation, and maintenance of the Program, including assigning specific responsibility for its implementation, and reviewing annual reports prepared by staff regarding compliance by the financial institution or creditor with this section.

(iii) *Reports.*

(A) *In general.* Staff of the financial institution or creditor responsible for implementation of its Program must report to the board, an appropriate committee of the board, or senior management, at least annually, on compliance by the financial institution or creditor with this section.

(B) *Contents of report.* The report must discuss material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of accounts and with respect to existing accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for changes in the Program.

§ 681.3 Duties of card issuers regarding changes of address.

(a) *Scope.* This section applies to a person described in § 681.2(a) that issues a debit or credit card.

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

(1) *Cardholder* means a consumer who has been issued a credit or debit card.

(2) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(c) *In general.* A card issuer must establish and implement reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. Under these circumstances, the card issuer may not issue an additional or replacement card, unless, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

(1) Notifies the cardholder of the request at the cardholder's former address and provides to the cardholder a means of promptly reporting incorrect address changes;

(2) Notifies the cardholder of the request by any other means of communication that the card issuer and the cardholder have previously agreed to use; or

(3) Uses other means of assessing the validity of the change of address, in accordance with the policies and procedures the card issuer has established pursuant to this section.

(d) *Form of notice.* Any written or electronic notice that the card issuer provides under this paragraph shall be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Appendix A to Part 681—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Red Flags in Connection With an Account Application or an Existing Account

Information From a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report.

2. A notice of address discrepancy is provided by a consumer reporting agency.

3. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as:*

a. A recent and significant increase in the volume of inquiries.

b. An unusual number of recently established credit relationships.

c. A material change in the use of credit, especially with respect to recently established credit relationships.

d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

Documentary Identification

4. Documents provided for identification appear to have been altered.

5. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

6. Other information on the identification is not consistent with information provided by the person opening a new account or customer presenting the identification.

7. Other information on the identification is not consistent with information that is on file, such as a signature card.

Personal Information

8. Personal information provided is inconsistent when compared against external information sources. *For example:*

a. The address does not match any address in the consumer report; or

b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

9. Personal information provided is internally inconsistent. *For example,* there is a lack of correlation between the SSN range and date of birth.

10. Personal information provided is associated with known fraudulent activity. *For example:*

a. The address on an application is the same as the address provided on a fraudulent application; or

b. The phone number on an application is the same as the number provided on a fraudulent application.

11. Personal information provided is of a type commonly associated with fraudulent activity. *For example:*

a. The address on an application is fictitious, a mail drop, or prison.

b. The phone number is invalid, or is associated with a pager or answering service.

12. The address, SSN, or home or cell phone number provided is the same as that submitted by other persons opening an account or other customers.

13. The person opening the account or the customer fails to provide all required information on an application.

14. Personal information provided is not consistent with information that is on file.

15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Address Changes

16. Shortly following the notice of a change of address for an account, the institution or creditor receives a request for new, additional or replacement checks, convenience checks, cards, or cell phone, or for the addition of authorized users on the account.

17. Mail sent to the customer is returned as undeliverable although transactions continue to be conducted in connection with the customer's account.

Anomalous Use of the Account

18. A new revolving credit account is used in a manner commonly associated with fraud. *For example:*

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (*e.g.*, electronics equipment or jewelry); or

b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.

19. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, *for example:*

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

20. An account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

Notice From Customers or Others Regarding Customer Accounts

21. The financial institution or creditor is notified of unauthorized charges in connection with a customer's account.

22. The financial institution or creditor is notified that it has opened a fraudulent account for a person engaged in identity theft.

23. The financial institution or creditor is notified that the customer is not receiving account statements.

24. The financial institution or creditor is notified that its customer has provided information to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent Web site.

25. Electronic messages are returned to mail servers of the financial institution or creditor that it did not originally send,

indicating that its customers may have been asked to provide information to a fraudulent Web site that looks very similar, if not identical, to the Web site of the financial institution or creditor.

Other Red Flags

26. The name of an employee of the financial institution or creditor has been added as an authorized user on an account.

27. An employee has accessed or downloaded an unusually large number of customer account records.

28. The financial institution or creditor detects attempts to access a customer's account by unauthorized persons.

29. The financial institution or creditor detects or is informed of unauthorized access to a customer's personal information.

30. There are unusually frequent and large check orders in connection with a customer's account.

31. The person opening an account or the customer is unable to lift a credit freeze placed on his or her consumer report.

Dated: May 8, 2006.

John C. Dugan,

Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System, July 5, 2006.

Jennifer J. Johnson,

Secretary of the Board.

By Order of the Board of Directors.

Dated at Washington, DC, the 9th day of May, 2006. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 10, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration Board on June 15, 2006.

Mary Rupp,

Secretary of the Board.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–6187 Filed 7–17–06; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 7535–01–P, 6750–01–P

Federal Register

Tuesday,
July 18, 2006

Part III

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations for Lead and Copper: Short-term Regulatory Revisions and Clarifications; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2005–0034; FRL–8196–5]

RIN 2040–AE83

National Primary Drinking Water Regulations for Lead and Copper: Short-Term Regulatory Revisions and Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing seven targeted regulatory changes to the National Primary Drinking Water Regulations (NPDWR) for lead and copper. This proposal strengthens the implementation of the Lead and Copper Rule (LCR) in the following areas: monitoring, treatment processes, customer awareness, and lead service line replacement. These changes will provide more effective protection of public health by reducing exposure to lead in drinking water. The proposed changes do not affect the basic requirements of the LCR, the lead or copper maximum contaminant level goals, or the lead and copper action levels.

DATES: Comments must be received on or before September 18, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before August 17, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2005–0034, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *OW-Docket@epa.gov*, Attention Docket ID No. OW–2005–0034.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2005–0034. Please include a total of three copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2005–0034. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. The www.regulations.gov Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section 1.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA Docket Center, 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.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Jeffrey Kempic, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4880. For regulatory inquiries, contact Eric Burneson at the same address; telephone number: (202) 564–5250.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by the Lead and Copper Rule Short-term Regulatory Revisions proposed rulemaking are public water systems (PWSs) that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs). Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned CWSs and NTNCWSs.
State, Tribal, and local governments.	Publicly-owned CWSs and NTNCWSs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''public water system'' in § 141.2, the section entitled ''coverage'' of § 141.3, and the applicability criteria in §§ 141.3 and 141.80(a) of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through EDOCKET,

regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to submitting one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible.

viii. Make sure to submit your comments by the comment period deadline identified.

Abbreviations Used in This Document

ALE: Action Level Exceedance
ANSI: American National Standards Institute
CCR: Consumer Confidence Report
CCT: Corrosion Control Treatment
CFR: Code of Federal Regulations
CWS: Community Water System
CWSS: Community Water System Survey
DDBP: Disinfectants and Disinfection Byproducts Rule
EPA: Environmental Protection Agency
FTE: Full-Time Equivalents
ICR: Information Collection Request
LCR: Lead and Copper Rule
LCRMR: Lead and Copper Rule Minor Revisions
LSL: Lead Service Line
LSLR: Lead Service Line Replacement
LT2: Long Term 2 Enhanced Surface Water Treatment Rule
MCLG: Maximum Contaminant Level Goal
NDWAC: National Drinking Water Advisory Council
NPDWR: National Primary Drinking Water Regulation
NSF: NSF International
NTNCWS: Non-Transient Non-Community Water System
O&M: Operation and Maintenance costs
OMB: Office of Management and Budget
PE: Public Education
POE: Point-of-Entry devices
POU: Point-of-Use devices
RFA: Regulatory Flexibility Act
RIA: Regulatory Impact Analysis
SBA: Small Business Administration
SDWA: Safe Drinking Water Act
SDWIS/FED: Safe Drinking Water Information System, Federal Version
UMRA: Unfunded Mandates Reform Act
WQP: Water Quality Parameter monitoring

Table of Contents

II. Background

A. Reason for This Rulemaking

The purpose of the Lead and Copper Rule (LCR) is to protect populations from exposure to lead and copper in drinking water and reduce potential health risks. Recent high profile incidences of elevated drinking water lead levels in the District of Columbia prompted EPA to initiate a comprehensive national review of the LCR to evaluate the implementation and effectiveness of the rule. EPA began the review to determine the following: were drinking water lead levels elevated nationally; did a large percentage of the population receive water that exceeded the Lead Action Level; did a significant number of systems fail to meet the action level; how well has the existing LCR worked to reduce drinking water lead levels; and has the rule implementation been effective especially with respect to monitoring and public education requirements. EPA gathered the information for the review through a series of stakeholder workshops in late 2004; an evaluation of monitoring data; and an evaluation of LCR implementation by States and water utilities.

As a result of the national review and workshops, EPA released a Drinking Water Lead Reduction Plan in March 2005 which identified nine actions to improve implementation of the rule. EPA has consolidated several of the Plan's actions into the seven proposed changes described in section III of this proposal. These changes to the rule are intended to strengthen in the short-term the implementation of the LCR in the areas of monitoring, treatment processes, customer awareness, and lead service line replacement. Some of the regulatory changes identified in EPA's review clarify the intent of the original LCR for provisions that may not have been sufficiently clear, while others revise LCR requirements in light of the recent experiences in the District of Columbia and elsewhere. The changes proposed are expected to enhance protection of public health through a reduction in lead exposure.

EPA has also identified a number of issues that will be considered for future revisions to the rule. These issues require additional data collection, research, analysis and/or stakeholder involvement to support decisions. The issues include, but are not limited to, requirements for consecutive systems, monitoring, and lead service line replacement requirements. This proposal does not amend the portion of the regulations related to copper, however provisions addressing copper will be considered for future revisions to the rule. EPA will propose any future regulatory changes under a separate regulatory action.

B. Regulatory History

EPA promulgated maximum contaminant level goals (MCLGs) and NPDWRs for lead and copper in 1991 (56 FR 26460, June 7, 1991d). The goal of the LCR is to provide maximum human health protection by reducing lead and copper levels at consumers' taps to as close to the MCLGs as is feasible. To accomplish this goal, the LCR establishes requirements for community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to optimize corrosion control in their distribution systems and conduct periodic monitoring.

The rule requires systems to optimize corrosion control to prevent lead and copper from leaching into drinking water. Large systems serving more than 50,000 people were required to conduct studies of corrosion control and install state-approved optimal corrosion control treatment by January 1, 1997. Small and medium systems are required to optimize corrosion control when monitoring at the consumer taps shows action is necessary.

To assure corrosion control treatment technique requirements are effective in protecting public health, the rule also established an Action Level (AL) of 15 ppb for lead and 1300 ppb for copper in drinking water. Systems are required to monitor a specific number of customer taps, based on the size of the system. If lead concentrations exceed 15 ppb in more than 10% of the taps sampled, the system must undertake a number of additional actions to control corrosion and inform the public about steps they should take to protect their health.

The LCR has four main functions: (1) Require water suppliers to optimize their treatment system to control corrosion in customers' plumbing; (2) determine tap water levels of lead and copper for customers who have lead service lines or lead-based solder in their plumbing system; (3) rule out the source water as a source of significant lead levels; and (4) if action levels are exceeded, require the suppliers to educate their customers about lead and suggest actions they can take to reduce their exposure to lead through public notices and public education programs. If a water system, after installing and optimizing corrosion control treatment, fails to meet the Lead Action Level, it must begin replacing the lead service lines under its ownership.

EPA proposed minor revisions to the LCR (LCRMR) in 1996 (60 FR 16348, U.S. EPA, 1996b) and finalized these minor revisions on January 12, 2000 (65 FR 1950, U.S. EPA, 2000a). These minor revisions streamlined the requirements of the LCR to promote consistent national implementation and reduce the reporting burden on affected entities. These minor revisions also addressed the areas of optimal corrosion control demonstrations, lead service line replacement requirements, public education requirements, monitoring requirements, analytical methods, reporting and recordkeeping requirements, and special primacy considerations. The LCRMR did not change the action levels, MCLGs, or the rule's basic requirements.

C. Impacts of This Proposal

This proposal will further strengthen protection of the public from exposure to lead and copper via drinking water by enhancing the implementation of the LCR in the areas of monitoring, customer awareness, and lead service line replacement. This action also clarifies the intent of some unclear provisions in the LCR. The regulatory revisions proposed today impose costs associated with State and system review of the regulatory changes, State review of system-level changes to treatment plans, system reporting and monitoring, and public education. EPA has estimated the economic impacts for each of the regulatory changes, which will have direct and indirect costs associated with them. A detailed description of these impacts is provided in Section IV, Economic Analysis, of this proposal and in the Economic Analysis support document.

III. Proposed Regulatory Revisions to the Lead and Copper Rule

This section describes the proposed clarifications and revisions to the Lead and Copper Rule. This section also describes issues and potential changes the Agency is requesting comment upon. Sections A through G describe changes proposed and alternatives for which the Agency is requesting comment. Section H describes several potential changes for which the Agency is soliciting comment.

A. Minimum Number of Samples Required

1. What Is EPA Proposing?

EPA proposes to clarify the number and location of samples required for the smallest systems in § 141.86(c) of the LCR. The 1991 LCR established a minimum number of sites required for

lead and copper tap monitoring based on system population size. EPA's proposal maintains five samples per monitoring period as the minimum number of samples required for systems serving fewer than 100 people.

2. Why Is EPA Proposing This Clarification?

EPA is proposing this clarification to reduce confusion with respect to this provision of the rule. EPA considered the issue of sample size extensively in the 1991 rule. EPA considered all concerns regarding the number of samples that should be taken and explained the rationale for the number of samples in the Preamble to the 1991 Final Rule. Due to the high variability in lead and copper levels, EPA explained that it was necessary to take more samples than required in other rules in which the variability is not as high. In the 1991 preamble, EPA also recognized the fact that sampling all households was not feasible and sought to balance this concern with the need for more samples to capture variability among lead levels. Specifically, the preamble stated: ''EPA believes that the number of samples required in the final rule sufficiently accounts for the variability in lead and copper levels, and reflects system-wide contaminant level distributions.'' (56 FR 26460 at 26523, U.S. EPA, 1991b); ''The requirements of the final rule seek to strike a balance between the competing needs of ensuring the representativeness of sampling results and ensuring that the sampling requirements are reasonable and implementable by public water systems.'' (56 FR 26460 at 26524, U.S. EPA, 1991b).

In the preamble to the 1991 Rule, EPA also addressed concerns about the high costs to small systems of implementing the minimum number of samples requirement as follows: ''EPA understands commenter's concerns with the potentially high costs of sampling for small systems but believes the increased number of samples is necessary to ensure that lead and copper levels are reasonably well represented.'' (56 FR 26460 at 26524, U.S. EPA, 1991d); ''For most systems, collecting more samples will be far less expensive than undertaking corrosion control or source water treatment, which they could otherwise be required to install based on an inappropriately small sample size.'' (56 FR 26460 at 26524, U.S. EPA, 1991d).

In the preamble to the 2000 minor revisions, EPA revisited the question of the appropriate number of samples. The 2000 preamble clarified that even if a system did not have enough high-risk sites to meet the minimum number of samples, the system must take the required minimum number of samples. The 2000 Preamble again explains EPA's rationale for choosing the minimum number of samples, stated as follows: ''The number of samples specified for initial monitoring, follow-up monitoring and reduced monitoring was established to sufficiently account for variability of lead and copper at taps while at the same time being reasonable for a system to implement.'' (65 FR 1950 at 1970, U.S. EPA, 2000a).

Even with the explanations in the 1991 and 2000 preamble, there continues to be some confusion about the minimum number of samples required. EPA hopes to clarify this issue further with these revisions. In the 1991 rule, the term ''site'' is used to refer to the number of samples collected. However, there has been confusion as to whether site refers to taps or samples. EPA is proposing additional regulatory language to clarify that water systems with fewer than five taps must sample all taps at least once and repeat sampling at some taps in order to collect the minimum number of samples required. EPA believes this approach will provide an accurate representation of the lead level. Because lead levels may change over time, EPA believes this sampling approach will give a system the most accurate picture of its water quality. EPA further defines the taps in this clarification to be ''taps used for human consumption'' in order to ensure that samples are taken from taps which would pose the highest risk for exposure to lead, rather than from a tap which is not used for drinking, such as an outside hose bib or utility sink.

3. How Does the Proposed Change Differ From the Current Requirement?

The proposal does not alter current requirements. This is a clarification of the minimum number of samples requirement and does not represent a change in rule requirements or EPA policy.

4. What Issues Related to This Proposed Change Does EPA Request Comment On?

While EPA is proposing to retain the five-sample minimum, EPA is also soliciting comment on an alternative which would specify that NTNCWSs with fewer than five taps used for human consumption would only be required to collect one sample per available tap used for human consumption. Under this alternative, the highest sample value would be compared to the action level, rather than an average of the two highest results. EPA is requesting comment: (1) On whether this alternative provides equal or greater protection than the proposed change, (2) on whether the alternative sampling requirement should be allowed only when the State determines that the system's historical monitoring data demonstrate the system is reliably and consistently below the action level.

EPA consulted with representatives of five State drinking water programs in the development of this proposal. The representatives of the State drinking water programs disagreed with the proposed clarification to the regulations described in Section III.A2 above. The State representatives proposed this alternative change to the regulatory language. State drinking water program representatives have argued that, while it may make sense to collect a minimum number of samples for larger community water systems (CWSs) so that there would be relative confidence in the results being representative of the system as a whole (due to variability), this does not apply to a system where 100 percent of the available taps are being tested. These State drinking water program representatives provided the following four reasons for their support of the alternative approach in lieu of this proposed clarification.

First, sampling at 100 percent of available taps will provide a high level of confidence that the sample results are representative of levels in the system, since the whole universe of available sampling sites is being sampled during each monitoring period.

Second, in the event that a system with fewer than five taps has only one single tap that exceeds the action level, taking a total of five samples can easily result in the system not having an Action Level (AL) exceedance (and therefore not needing to solve a lead problem), because the 90th percentile is calculated by averaging the two highest samples when there are five samples. When a system takes fewer than five samples, a single sample above the AL would be considered an AL exceedance under the alternative to this proposal.

Third, sampling each tap at systems that have fewer than five better represents variation over time in these systems than does the sampling for larger systems, since the same sites are sampled repeatedly (every monitoring period). Larger CWSs frequently have to change monitoring locations because consumers do not allow the system employees access to their homes on a repeated basis. Monitoring at 100 percent of the same sites over time (at NTNCWSs) would catch any changes in plumbing materials introduced over

time, as well as account for any variability at these sites over time.

Fourth, the alternative option would continue to provide robust protection for the most vulnerable populations, such as schools and childcare facilities, since all taps would be sampled. For example, if a preschool has a tap that exceeds the Lead Action Level, teachers would know not to use that tap to provide water to children for consumption, and the system would be required to address that issue immediately.

EPA requests comment upon the alternative option including the four reasons described above and any other information that should be considered in evaluating this alternative to the proposed change.

B. Definitions for Compliance and Monitoring Periods

1. What Is EPA Proposing?

EPA is proposing a number of clarifications throughout the LCR to clearly explain when compliance and monitoring periods begin and end.

2. Why Is EPA Proposing This Change?

EPA is proposing clarifications regarding monitoring and compliance periods in order to clarify the meaning of these terms and to address two issues. The term ''compliance period'' is defined in § 141.2 as a three-year calendar year period within a nine-year compliance cycle. The term ''monitoring period'' refers to the specific period within the compliance period in which a water system must perform the required monitoring (*e.g.*, June-September).

The first issue concerns the timing of actions following a lead or copper action level exceedance. For systems on reduced monitoring, they must monitor either once during each calendar year or once during each three-year compliance period. The monitoring period is from June to September or some other four-month period during normal operation when the highest lead levels are most likely to occur. Under the current regulations, some systems have been uncertain about when a system is determined to have exceeded the action level and the corresponding deadlines for completing corrosion control studies, lead service line replacement and public education (*e.g.*, end of December or the end of September for systems monitoring June to September). This change would clarify that the system would be determined to be exceeding the action level as of the date on which the monitoring period ended (*e.g.*, on September 30). This clarification is intended to ensure that the system and the State begin actions to reduce exposure, such as corrosion control, public education for lead and/or lead service line replacement, as soon as possible. The deadlines for completing these follow-up activities would be calculated from the date the system is determined to be exceeding the action level (end of the monitoring period).

The second issue concerns the timing of samples that should be taken during the three-year compliance period for systems on triennial monitoring. This proposal would require samples to be taken during four consecutive months within the compliance period, not over multiple years. This requirement would assure that States and systems have an accurate assessment of the effectiveness of corrosion control. Under this requirement, samples will need to be taken during four consecutive months, during the three-year period. For most systems, this will mean monitoring during June to September during one of the three years in the three-year compliance period. For systems where the State has approved some other four-month period, all samples must be taken during that four-month period. Sampling during a short, fixed time period will allow the system to more accurately evaluate the effectiveness of the corrosion control treatment than would collecting the same number of samples over a three year period.

We are also proposing that systems on triennial monitoring be required to conduct their monitoring every three years. Systems would therefore not be allowed to monitor during Year 1 of the first compliance period and during Year 3 of the second compliance period because that would mean five years would have passed between monitoring rounds. A similar change is also proposed for small systems with monitoring waivers to ensure that they monitor every nine years.

3. How Does the Proposed Change Differ From the Current Requirement?

EPA is proposing clarifications of the terms, ''monitoring period'' and ''compliance period.'' EPA also proposes to revise a number of sections in the LCR to more precisely specify when the ''start date'' for the compliance calendar occurs. These changes clarify existing language rather than changing any requirements of the rule. These clarifications will ensure that corrosion control, public education, and/or lead service line replacement are started in a timely fashion in order to reduce exposure to lead. EPA also proposes revisions that will make it clear when systems may begin reduced monitoring as well as when they need to resume more frequent monitoring. Again, EPA is not changing requirements but rather making sure the current requirements are clear and are consistently implemented.

EPA is also proposing that systems on triennial monitoring must monitor during one four-month period (called the ''monitoring period''). EPA is further proposing that systems on triennial monitoring monitor every three years, so that the start of the next round of monitoring is based on the previous round of monitoring. Systems would not be allowed to monitor in Year 1 of one round of one three-year compliance period and Year 3 of the next three-year period, since that would allow five years between rounds of monitoring. This same approach would also be applied to the nine-year cycles for systems with a monitoring waiver.

4. What Issues Related to This Proposed Change Does EPA Request Comment On?

EPA is requesting comment on the clarifications throughout the rule regarding the terms monitoring period and compliance period. EPA also requests comments on other sections of the LCR that may need modification to clarify when actions are required to begin or be completed. In addition, EPA requests comment on the appropriateness of requiring systems on reduced monitoring to take all of their required samples during one four-month period in order to evaluate the effectiveness of the corrosion control treatment.

C. Reduced Monitoring Criteria

1. What Is EPA Proposing?

EPA is proposing to disallow water systems that exceed the Lead Action Level from initiating or remaining on a reduced lead and copper monitoring schedule based solely on the results of their water quality parameter monitoring. This proposed change would modify the reduced monitoring provisions in § 141.86(d)(4), specifically subsections (ii) , (iii) and (iv). These sections discuss when small and large water systems may reduce the required number of lead and copper samples in accordance with paragraph (c) of § 141.86.

2. Why Is EPA Proposing This Change?

EPA is proposing this change because the Agency believes that reduced monitoring should only be permitted in instances in which it has been demonstrated that corrosion control

treatment is both effective and reliable. Compliance with water quality parameters alone may not always indicate that corrosion control is effective.

Monitoring lead levels is particularly critical for systems that are exceeding the Lead Action Level for several reasons. One reason is that it will assist systems in evaluating the effectiveness of corrosion control treatment. The 1991 LCR intended to allow systems eligibility for reduced monitoring even if they exceeded the lead or copper action level if they could demonstrate their corrosion control treatment was effective by meeting the State-designated water quality parameters. However, as shown by the events in the District of Columbia and as stated above, compliance with water quality parameters alone may not always indicate that corrosion control is effective, especially after a treatment or source change. Continued exceedance of the Lead Action Level may indicate that a particular method of corrosion control treatment is not effective for a particular system and this data may assist this system in finding a better alternative treatment. In addition, a system must know if it continues to exceed the Lead Action Level after installing corrosion control treatment in order to determine how long its lead service line replacement requirements remain in effect. Continued understanding of the range of lead levels detected within the system can also help the system implement an effective public education program.

Secondly, primacy agencies may gain a more accurate picture of what lead levels in drinking water currently exist in their States. Many systems within States share water sources, have similar treatment technologies, and have similar materials in their distribution systems. States and other primacy agencies with knowledge of effective corrosion control for one system may be able to aid other systems within their jurisdiction in lowering lead levels in water. Having a more accurate characterization of lead levels in drinking water that exceeds action levels will also allow States and systems to better inform consumers and, thereby, create greater confidence in their efforts to reduce lead levels.

3. How Does the Proposed Change Differ From the Current Requirement?

In addition to monitoring lead and copper levels at households, systems that exceed the lead and copper action level are required to monitor for water quality parameters established by the State. These water quality parameters include pH, alkalinity, and other parameters that reflect the method used to control the corrosivity of the water (e.g., phosphate levels). States establish acceptable ranges for these parameters for individual systems that must be maintained to assure compliance with the rule. Currently a system that meets the water quality parameter requirements is eligible to reduce the frequency of its lead and copper monitoring even if the system is currently exceeding the action levels. The proposed revision would limit the eligibility of reduced monitoring to only those systems meeting the Lead Action Level.

Currently, paragraph (4) of § 141.86(d) contains provisions for when water systems may reduce the monitoring frequency and the number of required lead and copper samples for systems of various sizes under both standard and reduced monitoring. Under subparagraph (ii) of this section, any water system that meets the water quality parameters specified by the State under § 141.82(f) for two consecutive six-month monitoring periods may reduce their monitoring to once per year and reduce the number of samples in accordance with paragraph (c) of § 141.86 with written approval from the State. Under subparagraph (iii) of this section, any water system that meets these water quality parameters for three consecutive years of annual monitoring may reduce the monitoring frequency to once every three years with written approval from the State. The Agency is proposing to require that these systems must also meet the Lead Action Level over the specified time period as a criterion for reduced monitoring. For example, under subparagraph (ii) a system would have to meet the Lead Action Level and the State water quality parameters for two consecutive six-month monitoring periods in order to be eligible, with written approval from the State, to reduce its monitoring frequency to once per year and reduce the number of samples required in accordance with § 141.86(c). This proposed change will also require systems currently on reduced monitoring schedules that exceed the Lead Action Level during any four consecutive month monitoring period to resume sampling the standard monitoring number of sites under § 141.86(c) each consecutive six-month monitoring period.

It should be noted that subparagraph (i) of § 141.86(d)(4) allows small- or medium-size water systems to reduce monitoring to once per year after meeting both the lead and copper action levels for two consecutive six-month monitoring periods. Subparagraph (iii) of the same section allows small- and medium-size systems to reduce monitoring from annually to once every three years after meeting both the lead and copper action levels for three consecutive years. The Agency is not proposing to change either of these requirements. Small- and medium-size systems that meet both the lead and copper action levels may still reduce monitoring in the manner described in these sections without State approval.

4. What Issues Related to This Proposed Change Does EPA Request Comment on?

EPA requests comment on the proposal to disallow water systems that are above the Lead Action Level from initiating or maintaining a reduced monitoring schedule based solely on the results of their water quality parameter monitoring.

EPA did consider requiring that all systems meet both the lead and the copper action levels as criteria for eligibility for reduced monitoring. However, the Agency determined that copper issues should be considered as part of longer term revisions to the rule. EPA also believes that adding the copper action level requirement could impose a large monitoring increase on some small and medium systems that are currently limited in their ability to reduce copper below the action level (i.e., high alkalinity ground waters). For these systems, the States currently have flexibility in the existing rule to limit systems from proceeding to reduced lead and copper tap monitoring. Under subparagraphs (ii) and (iii) of § 141.86(d)(4), a State may review and revise its determination to allow a system to proceed with reduced monitoring when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

D. Advanced Notification and Approval Requirement for Water Systems That Intend To Make Any Change in Water Treatment or Add a New Source of Water That Could Affect the System's Optimal Corrosion Control

1. What Is EPA Proposing?

EPA is proposing to amend § 141.81(b)(3)(iii), § 141.86(d)(4)(vii), § 141.86(g)(4)(iii), and § 141.90(a)(3) to require water systems to obtain prior approval by the State primacy agency to add a new source of water or change a treatment process prior to implementation. The proposed regulatory language allows as much time as needed for water systems and States to consult before making those

changes. In addition to allowing this type of State discretion, EPA is currently developing a revised simultaneous compliance guidance document that can be used by the State to identify those situations where optimal corrosion control can be affected by changes in treatment or source water.

2. Why Is EPA Proposing This Change?

In the 2000 revisions to the LCR, EPA published in the **Federal Register** a requirement that water systems notify the State primacy agency of the addition of a new source or treatment change no later than 60 days after implementing the change (65 FR 1950 at 1977, U.S. EPA, 2000a). When water systems make changes in their source water or treatment processes there could be unintentional effects on the water system's optimal corrosion control. The goal of this provision was to ensure that a water system maintained optimal corrosion control following changes in water quality resulting from a change in source or treatment process by providing the primacy authority an opportunity to review the change and its possible impacts on corrosion control. An example of change in treatment would be a switch in disinfectant.

EPA now believes that this provision may not be adequate to ensure continued optimal corrosion control because the primacy agency review comes too late in the process. If a water system notifies the State primacy agency of changes that have already been made that could result in leaching of lead from plumbing components such as service lines, there may be little opportunity to minimize any anticipated problems with corrosion or prevent leaching from occurring. For this reason, EPA believes that such changes in treatment should be reviewed and approved by the State before they are implemented. Also, EPA believes that this proposed requirement would fit well into the existing State program plan review and approval requirements that are part of the State's primary enforcement responsibilities described in § 142.11(a)(2)(v).

3. How Does the Proposed Change Differ From the Current Requirement?

Under the current requirement, water systems must simply provide written notification to the State within 60 days after the change in treatment or source has been made. This proposed regulatory revision requires that the notice of change be given in advance, and the State must approve the change. This gives water systems the opportunity to consult with their States and identify any measures that may be necessary to avoid or minimize potential problems with corrosion control. It also allows the State to design a monitoring program upfront, for those situations where it is necessary to ensure that corrosion control is being maintained adequately after the change has been made.

4. What Issues Related to This Proposed Change Does EPA Request Comment on?

Although EPA believes the proposed regulatory revision is the best approach to address potential problems with corrosion control when treatment/source changes are made, EPA requests comment on a number of issues related to the proposal. First, EPA also considered the alternative of simply requiring advance notification to the State at least 60 days before the change. However, EPA decided to propose both prior notice and approval for two reasons. The first reason is that EPA could not determine a period for advance notice that would be appropriate for all changes; in some cases 60 days would be unnecessary (e.g., emergency changes to chemical feed systems) and in some cases it would be grossly insufficient (e.g., major system improvements such as installation of ion-exchange treatment). The second reason is that several States pointed out that they already require approval of such changes and thought such approval was necessary to ensure that optimal corrosion control would be maintained. EPA requests comment on the advanced notice (without approval) alternative and if commenters favor the alternative, EPA requests that commenters address the issue of how much time to provide (e.g., 60 days or another time period).

The second issue on which the Agency would like public comment is what the phrase ''addition of a new source'' should mean for systems that mix water sources. For example, a water system can mix source water by going from 100% surface water to 50% ground water and 50% surface water on either a permanent or temporary (e.g., seasonal) basis. In this case, the mixing of source waters might or might not be considered an addition of a new source under the regulation. Similarly, a system may change the proportion of two sources such as moving from 75% ground water and 25% surface water to 25% ground water and 75% surface water. These changes could also affect the water chemistry in a way that could impact corrosion control. From time to time, water systems may switch entirely from one source to another, such as going from 100% surface water to 100% ground water. EPA requests comment on (1) whether and when such changes should require prior approval and, (2) if approval should not be required for all such changes, what criteria should be used to distinguish these kinds of changes in source water from the source water changes that might affect corrosion control and need prior approval. Specifically, EPA requests public comment on whether the words ''source change'' should replace ''addition of a new source'' to describe a broader range of scenarios where source waters are changed in some way (e.g., mixing of source waters in different proportions) or if EPA should describe in more detail in rule or preamble language or guidance which types of changes require prior State approval.

E. Requirement To Provide a Consumer Notice of Lead Tap Water Monitoring Results to Consumers Who Occupy Homes or Buildings That Are Tested for Lead

1. What Is EPA Proposing?

EPA is proposing to amend the public education requirements described in § 141.80 (g) and add a new notification requirement at § 141.85(d) that will require water systems to provide consumers who occupy homes or buildings that are part of the utility's monitoring program with testing results when their drinking water is tested for lead.

2. Why Is EPA Proposing This Change?

Although some utilities may provide customers with the results of analyses conducted to meet requirements of the regulations, utilities are not currently required by EPA to notify occupants of the lead levels found in their drinking water. While samples are primarily collected to evaluate the effectiveness of corrosion control or to evaluate the corrosivity of the utility's water across the entire service area, the results of lead monitoring can provide useful information to the occupants of the household from which the samples were taken. Occupants can evaluate the results of lead tests for their drinking water and use that information to inform any decisions they might make to take action to reduce their exposure to lead in drinking water.

3. How Does the Proposed Change Differ From the Current Requirement?

There are currently no provisions in the regulation that require water utilities to notify occupants of results of routine monitoring conducted to comply with the LCR. Community water systems

must collect samples from between five and 100 households to evaluate lead and copper concentrations. Non-transient, non-community water systems (including some schools that operate their own water system) must also collect samples. This proposed rule change would require systems to provide written notification to occupants of the households no later than 30 days after the utility learns the results for the samples collected from that household and to post or otherwise notify occupants of non-residential buildings of the results of the lead testing. This would include staff and parents of students for schools that are tested as non-transient non-community water systems.

While there are no current requirements associated with notification of results of routine monitoring in the LCR, there are requirements for utilities to provide notice to homeowners when their water is tested in carrying out partial lead service line replacement. Section 141.84(d)(1) requires that utilities test water within 72 hours after the completion of partial replacement of a lead service line. The utility must report the results of the analysis to the owner and the resident(s) served by the line within 3 business days of receiving the results. Utilities must provide the information by mail or by other methods approved by the State. In instances where multi-family dwellings are served by the line, the water system has the option to post the information at a conspicuous location. This provision is not affected by the proposed rule change.

The proposed language would require utilities to provide consumers (owners or occupants) at locations that were tested during routine tap monitoring pursuant to § 141.86 with a consumer notice of the tap monitoring results as soon as practical, but no later than 30 days after the utility learns of the results. The notice must contain an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water, provide contact information for the utility, include the Maximum Contaminant Level Goal (0 (µg/L), the action level (15 (µg/L) and an explanation of what these values mean. The results must be provided by mail or other methods approved by the State.

EPA selected thirty days as the timeframe for notifying consumers of results because it is consistent with the notification time frame for a Tier 2 Public Notice and because it would better allow utilities sufficient time to generate a large number of notices for mailing at one time. The purpose for including the MCLG and the action level is to give consumers context as to their level of exposure in comparison to the goal and standard established for lead in drinking water. The MCLG is the level at which no known adverse health effects occur (with an adequate margin of safety) and the action level is the concentration of lead that States and systems use to determine if systems must install corrosion control treatment if they have not already done so, or if they must begin public education and lead service line replacement.

4. What Issues Related to This Proposed Change Does EPA Request Comment On?

EPA seeks comment on several specific elements associated with the proposed requirements. Is 30 days sufficient time to provide notification, or is a shorter or longer time frame appropriate? Is it appropriate to include the MCLG and the action level and a brief explanation of their significance, or is there some other information that systems should or could be asked to provide that would be more useful to consumers in determining whether their tap monitoring results warrant further action to protect household members, especially children, from lead exposure through drinking water?

Additionally, during development of the proposal, it was suggested that this provision would cause an undue burden on non-transient non-community water systems. EPA believes it is important to include non-transient non-community systems because many of them are schools or childcare facilities, which provide water to the population more susceptible to lead exposure. Given the flexibilities included in the proposal related to means of delivery, EPA seeks comment on whether this provision would cause an undue burden to non-transient non-community water systems.

F. Public Education Requirements

1. What Is EPA Proposing?

EPA is proposing to change the public education requirements of the Lead and Copper Rule (LCR) in the Code of Federal Regulations at § 141.85. The proposal would still require water systems to deliver public education materials after a Lead Action Level exceedance. EPA is proposing to change, however, the content of the message to be provided to consumers, how the materials are delivered to consumers, and the timeframe in which materials must be delivered. The changes to the delivery requirements include additional organizations that systems must partner with to disseminate the message to at-risk populations as well as changes to the media used to disseminate information to ensure that it reaches consumers when there is an action level exceedance.

In addition to the changes to § 141.85 for the LCR, EPA is also proposing a change to § 141.154(d) for the Consumer Confidence Report (CCR) rule, which requires community water systems to send an annual report to billed customers containing information relevant to the quality of the drinking water provided by the system (63 FR 44512, August 19, 1998, U.S. EPA 1998a). EPA is proposing to change the CCR rule to require all community water systems that detect lead in their compliance monitoring samples to include information about the risks of lead in drinking water in the report on a regular basis.

2. Why Is EPA Proposing This Change?

EPA is proposing to change the public education requirements of the LCR in order to improve compliance and ensure that consumers receive the information they need to appropriately limit their exposure to lead in drinking water. Because the sources of lead are frequently within the home and reduction of lead in drinking water is the responsibility of both the public water systems and the consumer, EPA wants to ensure that information is delivered and that it is meaningful and useful to the consumer.

EPA identified compliance as an important issue during its review of LCR implementation. Based on EPA's review of state files, over 40 percent of water utilities did not conduct the required public education; therefore the at-risk population did not get information they needed to reduce their exposure from lead in drinking water (Lead and Copper Rule State File Review: National Report, EPA, March 2006a) EPA believes the changes in this proposal better ensure that at-risk populations receive information quickly and are able to act to reduce their exposure. EPA also believes water systems will be better able to comply with these proposed requirements.

During EPA's national review of the LCR, many stakeholders stated that the public education requirements needed improvement. In September 2004, EPA held an expert workshop to discuss the public education requirements of the rule. A number of concerns were raised at this workshop about the effectiveness of the existing public education language and requirements. Workshop

participants stated that the mandatory language in the rule is too long, cumbersome, and complex to convey to the general public an understanding of the risk posed by lead in drinking water and an appropriate course of action. Public education must put the risk in context and convey to the public the appropriate sense of urgency for consumers to act to reduce exposure. In addition, workshop members called for public education messages to be tailored to those who are at highest risk for lead exposure. Many participants stated that the mandatory language and delivery requirements in the current rule were ineffective in providing useful and timely information to the public. (Summary from Public Education Workshop, U.S. EPA, 2004a).

In order to address these concerns, the National Drinking Water Advisory Council (NDWAC), EPA's advisory body on the Safe Drinking Water Act, formed a working group to consider possible revisions to the public education requirements. The charge for the NDWAC Working Group was to (1) review the current public education requirements for lead in drinking water to make recommendations for improvements; (2) develop recommended revised language for communicating to the public the risk of lead in drinking water and how affected persons should respond; and (3) review and make recommendations for changes to the means of delivery of lead information to the public (70 FR 54375, U.S. EPA, 2005).

The NDWAC Working Group met in person four times between October 2005 and April 2006. The Working Group was comprised of 16 individuals representing an array of backgrounds and perspectives. Collectively, these individuals brought into the discussion the perspectives of State drinking water agencies, environmental and consumer groups, drinking water utilities, small system advocates, State health officials, and risk communication experts.

The NDWAC Working Group raised a number of concerns with the public education requirements of the LCR that are consistent with the concerns expressed at the 2004 workshop. The NDWAC Working Group recommended that the rule be modified to better ensure that information reaches the most vulnerable populations (e.g., pregnant women, infants and young children) or their caregivers. They also recommended changes to ensure that these consumers received information in a more timely manner and continued to receive information throughout any exceedance. They also recommended changes to ensure that the information is easy to understand and effective in informing affected consumers and encouraging parents or other caregivers to take actions to reduce exposure of infants and children to lead. In addition, the NDWAC Working Group recommended changes to make sure critical information reaches not only bill paying customers, but those consumers who live in apartments and other housing where residents do not receive bills.

Finally, the NDWAC Working group was also concerned about the amount of time it may take to test water, get back the results, calculate the 90th percentile, and finally send out public education materials. They were concerned that an individual could be drinking water with high lead levels for months before knowing of the problem. As a result, they recommended changes to increase the timeliness of public education on lead in drinking water.

The NDWAC recommendations are, in part, modeled after the public education information under two existing EPA rules, the CCR rule and the Public Notification Rule (65 FR 25982, U.S. EPA, 2000b). The NDWAC recommendations form the basis for the changes to § 141.85 proposed in this rulemaking.

3. How Does the Proposed Change Differ From the Current Requirement?

The public education requirements in this proposal differ in a number of ways from the current requirements of the LCR. This proposal still requires water systems to complete the public education requirement after a Lead Action Level exceedance, but changes the mandatory content of written materials, delivery requirements, and timing of when systems must complete all required activities. This proposal also changes the requirements for the language or content of written materials, giving water systems more flexibility to tailor the public education message to their community and situation. EPA believes these changes will make the public education program more effective. In addition, this proposal changes the delivery requirements in a number of ways. Water systems will be required to send written materials to additional organizations in an attempt to better reach at-risk populations. This proposal also requires the systems to do several additional activities but allows them to pick from a list of activities in order to do what is most effective for their community. This proposal requires that water systems maintain communication with consumers throughout the Lead Action Level exceedance by including information with every water bill; provide two press releases a year; and for larger systems, include information on their Web site. This proposal allows primacy agencies to give water systems more time to complete the additional activities and deliver water bills. Finally, this proposal includes changes to the Consumer Confidence Report to ensure consumers are aware of concerns about lead in drinking water.

a. Changes to the Mandatory Text of the Written Materials

This proposal requires the system to continue to deliver written materials to all customers as well as a number of key organizations. However, EPA is proposing to change the content of the required written materials. Currently, § 141.85 requires written materials to include mandatory language consisting of over 1,800 words describing health effects, lead in drinking water, steps to reduce exposure, and how to obtain additional information. Under this proposal, the mandatory language would be much shorter and easier to understand. The mandatory language would address essential topics such as the opening statement and health effects language. Community Water Systems and Non-Transient Non-Community Water Systems would still be required to provide information on other topics, but the system may either use EPA's suggested language or their own words to explain these topics. EPA believes that this format will result in more effective public education materials.

EPA does recognize that small systems do not have the resources to create their own language for the required topics, so EPA will provide language in guidance that systems can use to explain all of the required topics in the regulation. For example, EPA is giving systems more flexibility in the language they use for flushing instructions, yet for systems that do not have data to identify clear flushing instructions, EPA will suggest flushing times to share with customers.

b. Changes To Better Reach At-Risk Populations

EPA is proposing to add organizations to the list of recipients of the public education materials in order to increase the likelihood that the most vulnerable populations or their caregivers will receive the information they need to reduce their exposure to lead in drinking water. EPA is proposing to add licensed childcare centers, preschools, Obstetricians-Gynecologists and Midwives to the current list of organizations to which a system must deliver information. In addition, EPA is

proposing a new requirement that systems include a cover letter with the printed materials that they send to these organizations to explain the importance of sharing this information with their customers/patients. This proposal is designed to help ensure that the information reaches non-bill paying customers; these customers may be reached through these organizations if the organizations are provided with the necessary information and encouraged to share the task of improving public awareness.

While it is important for this information to get to all of these organizations, EPA believes that the local health agencies play an important role in making sure consumers who are most vulnerable receive the information they need to reduce their exposure to lead in drinking water. In order to make sure the local health agencies know about the Lead Action Level exceedance, EPA is proposing to require systems to directly contact (e.g., phone, in person, etc.) the local health agency rather than simply delivering brochures to this organization. By directly contacting the local health agency, utilities can enlist the health agency's support in disseminating information on lead in drinking water and the steps that vulnerable populations can take to reduce their exposure.

In addition to using organizations to disseminate information to at-risk populations, EPA is also proposing that systems complete additional activities from a list of options. The list of additional activities that systems can choose from includes:

- Public Service Announcements
- Paid advertisements such as newspaper or transit ads
- Information displays in public areas such as grocery stores
- Using the internet or email to disseminate information
- Public meetings
- Delivery to every household (not just bill paying customers)
- Individual contact with customers such as door hangers
- Provide materials directly to multi-family homes and institutions
- Other methods approved by the primacy agency

This proposal requires that systems serving 3,300 people or above be required to do three additional public education activities from the list of possible items and systems serving 3,300 or fewer individuals must do one additional activity from this list. The system must work in consultation with the primacy agency to ensure the content of each of these additional activities is appropriate. EPA is proposing that a system can choose three items from one, two, or three of these general categories. For instance, a system can do a series of paid advertisements if that is the most effective way to reach the target populations in their community.

System, State and consumer representatives on the NDWAC Working Group all agreed that what works in one community does not always work best in another community. In order to make the public education as effective as possible, EPA is proposing to give systems some flexibility in how they deliver their public education materials. They are still required to disseminate information to people served by their system, but they have some flexibility in how they complete their program. For instance, a large system in an urban area may choose to use a public service announcement and paid advertisements to reach consumers, while a system in a rural area may find the best way to reach customers is through displaying information in frequently visited public areas or public meetings.

In the current regulation, small systems are able to limit their distribution to only those facilities and organizations frequented by the most vulnerable populations. While systems serving less than 500 people may do this without approval from the state, systems serving 501–3,300 may limit their distribution if they receive written approval from the state. This proposal changes this so that all small systems serving 3,300 or fewer people may limit their distribution to only those places frequented by the most vulnerable populations without written approval from the state.

c. Changes To Help Systems Maintain Communication With Consumers Throughout the Exceedance

In order to ensure continued contact with consumers, EPA is also proposing that systems include information in or on the water bill as long as there is an exceedance of the Lead Action Level. EPA recognizes that this requirement can be difficult for some systems that are unable to print messages on their bills, so there is a provision to allow systems to work with their primacy agency to deliver this information in a different way.

Another way that this proposal encourages continuous communication with consumers is by requiring systems with a population greater than 100,000 to put the public education information on their Web site. Under the proposal, this information must remain on the Web site until the system tests below the Lead Action Level.

Currently, systems that exceed the Lead Action Level must issue a press release. EPA is proposing to require that systems distribute two press releases per year in order to ensure systems are maintaining communication with their customers. The systems must send the press releases to the major newspapers and TV and radio stations which serve the population served by the water system. This is another way to reach consumers who do not receive water bills. In response to concerns about small systems' ability to complete this requirement, in this proposal, primacy agencies can waive the press release requirement if there are no media outlets that specifically target the population served by the system. In addition, this proposal removes the requirement for medium and large systems to provide two Public Service Announcements (PSA) per year.

d. Changes to the Required Timing of Completion of Public Education Requirements

While this proposal would still require systems to complete most of their public education in 60 days, there is increased flexibility for the primacy agency to allow longer periods of time for completion of water bill delivery and the additional activities from the list of options. This proposal would allow more time so that a system could align its billing cycle with the public education requirements. EPA understands that many systems have a billing cycle which may begin within the 60 days time frame but not all customers would be billed at the same time. The primacy agency may allow the system to include information with their regular billing cycle even if this means some customers receive this part of the public education program a bit later than the 60-day window. In addition, EPA is proposing to allow the system to work with the primacy agency on a schedule to complete the additional items such as PSAs or advertisements. This is intended to encourage systems to pick the items from this list that will be most effective and will reach the most vulnerable populations rather than the items that are easiest and quickest to complete. In order to make sure that the public education program is effective, the primacy agency may allow the system to take a bit longer to complete these more complicated items. The system must still complete all other aspects of the public education program, such as delivering materials to organizations that work with at-risk populations, posting information on their Web site and submitting press releases within the 60 days. This will

ensure that customers receive some information as quickly as possible.

e. Changes to Consumer Confidence Reports

The NDWAC suggested changes to the CCR rule to address the concern that materials may not be delivered immediately and therefore vulnerable populations may drink water with high levels of lead for months before knowing of the risk. Under current regulations, all water systems that detect lead above the action level in more than five percent of the homes sampled must include a short informational statement about lead in drinking water in their CCR. In this action, EPA is proposing that all Community Water Systems who detect lead above the method detection limit of 0.001 mg/L in their compliance monitoring samples provide information in their annual CCR on lead in drinking water. This approach is consistent with the CCR rule requirements for the other inorganic contaminants in § 141.151, which is also based on the method detection limit. This short statement will help to ensure that all vulnerable populations or their caregivers receive information on how to reduce their risk to lead in drinking water at least once a year. In addition, the NDWAC recommended changes to the language in the informational statement to make the risk of lead in drinking water clear as well as to include basic steps on how to reduce exposure to lead in drinking water and where to go for more information. EPA is proposing these changes in this rule.

4. What Issues Related to This Proposed Change Does EPA Request Comment on?

EPA is asking for comment on the proposed revisions to the public education requirements under the Lead and Copper Rule. In particular, EPA requests comment upon revisions to the mandatory language for written materials. EPA requests comment on the flexibility provided in the requirements for the content of written public education materials. EPA also requests comment on the shortened mandatory language and suggested language for other required topics. Do commenters believe this revised language is clearer and will be easier for consumers to understand? Is the proposed health effects language and information on steps consumers can take to reduce lead exposure useful to consumers? Should the language also indicate that exceedence of the action level at the 90th percentile tap reading does not mean that all consumers are exposed to elevated levels of lead? Do commenters have any concerns about compliance with the proposed content requirements? Should EPA require systems to submit their written materials to primacy agencies before distributing them? EPA also requests comment on whether or not systems should be required to modify their public education materials if the primacy agency determines it is not consistent with the mandatory language.

The mandatory language includes a section on contacts for more information. This section includes a requirement for the system to include how to contact both the system and EPA. EPA requests comment on whether there should be a mandatory requirement to include the contact information for the State drinking water primacy agency. EPA is aware that a number of States adopt EPA drinking water regulations by reference and these States would not be able to insert a requirement for systems to provide State contact information. Would States who adopt by reference face a challenge encouraging customers to contact their office under the current proposal?

EPA also seeks comment on the delivery requirements for the public education message. Will the changes to the delivery requirements make the public education program more effective at reaching the most vulnerable populations? Are there other delivery mechanisms EPA should consider? EPA is also interested in any studies or information commenters have on ways to reach the populations of concern.

The delivery requirements in this proposal expand on the requirement that systems deliver public education materials to certain organizations such as schools, pediatricians, childcare centers, etc. EPA requests comment as to how a system that exceeds the Lead Action Level should determine to which of these organizations it must deliver materials. Should the system deliver materials to only organizations that are served by that system, all organizations in the county or other local government jurisdiction, or all organizations that provide service to the population served by the water system?

EPA is proposing that Community Water Systems consult with the primacy agency to ensure the information they disseminate as part of the additional activities under § 141.85(b)(2)(vi) is appropriate. EPA is interested in whether commenters believe this is too great a burden on the primacy agency. Should EPA determine the required content for these additional activities? If EPA should make this determination, do commenters have suggestions for what the content should be?

EPA is interested in whether commenters agree that some water systems will need more than 60 days to complete delivery of water bills which include the public education information and the additional activities from the list (*e.g.*, PSAs, paid advertisements, etc.)

EPA also requests comment on whether this proposal adequately addresses the concerns of small systems. Many small systems have limited resources and limited technical capabilities. Will these systems be able to complete the requirements, and if so, will this make for an effective public education program in their communities?

EPA also requests comment on the proposed modifications to the CCR rule requirements for lead. First, EPA requests comment on requiring systems that detect any lead to include language in their consumer confidence report. This requirement would be triggered for systems detecting lead above the method detection limit of 0.001 mg/L. EPA is interested in whether commenters think the criterion should be detecting lead above the practical quantitation level of 0.005 mg/L, or above some other level that may be more relevant for consumers in determining whether they should take any further action?

Second, EPA requests comment as to whether the CCR is an effective way to reach the targeted populations before there is a major problem in a water system. Are there other vehicles for reaching these individuals that EPA should consider?

Third, EPA requests comment upon the content of the informational statement to be included in the CCR for systems that detect lead or exceed the Lead Action Level. EPA requests comment on whether this language would be effective in raising the targeted populations' awareness of the effects of lead in drinking water and steps they can take to minimize exposure to lead. In particular, EPA notes that the proposed language is essentially the same whether the system has exceeded the action level or not. Should EPA develop language that communicates a greater urgency about taking further action in situations where the action level has been exceeded than in situations where it has not? EPA also notes that the language focuses on the household plumbing as the potential sources of lead in drinking water. EPA requests comment as to whether other potential sources of lead (*e.g.*, service lines) should be identified for the consumer.

G. Reevaluation of Lead Service Lines Deemed Replaced Through Testing

1. What Is EPA Proposing?

EPA is proposing to require water systems to reevaluate lead service lines classified as ''replaced'' through testing if they resume lead service line replacement programs. This would only apply to a system that had (1) initiated a lead service line replacement program, then (2) discontinued the program, and then (3) subsequently resumed the program. When resuming the program, this system would have to reconsider for replacement any lead service lines previously deemed replaced through the testing provisions in § 141.84(c) during the initial program. This proposed change would add a subsection to the lead service line replacement requirements in § 141.84(b) to include provisions for systems resuming lead service line replacement programs.

2. Why Is EPA Proposing This Change?

Lead service line replacement is intended as an additional step to reduce lead exposure when corrosion control treatment is unsuccessful. The provision in § 141.84(c), which allows systems to leave in place an individual lead service line if the lead concentration in all service line samples from that line is less than or equal to 0.015 mg/L, is intended to maximize the exposure reduction achieved per service line replaced by avoiding the disruption and cost of replacing lines that are not leaching high levels of lead. However, samples taken from a lead service line pursuant to § 141.84(c) cannot predict future conditions of the system or of the service line. Systems can discontinue a lead service line replacement program by meeting the Lead Action Level for two consecutive 6-month monitoring periods. Therefore, EPA is proposing that these systems reconsider any lines previously determined to not require replacement if they exceed the action level again in the future and resume the lead service line replacement program.

3. How Does the Proposed Change Differ From the Current Requirement?

A system that exceeds the action level must replace at least seven percent of its lead service lines each year until it is under the action level for two consecutive 6-month monitoring periods. Currently, a system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line are less than or equal to 0.015 mg/L. The proposed revision would continue to allow systems to determine if a lead service line does not require replacement in this manner. However, the proposal would not allow systems to consider such lines as permanently removed from the replacement program. This rule change would apply to a system that (1) exceeds the action level, (2) tests out one or more service lines, (3) brings lead levels below the action level for two consecutive 6-month monitoring periods and discontinues replacing lead service lines, and (4) later exceeds the action level again. That system would have to reinitiate lead service line replacement considering all lead service lines including those that had previously tested out of the replacement program under § 141.84 (c). The system would divide the updated number of remaining lead service lines by the number of remaining years in the initial lead service line replacement program to determine the number of lines that must be replaced per year. Systems resuming lead service line replacement programs as detailed above would not have 15 years from the date of recommencement and, thus, would not be able to restart the ''clock'' for their lead service line replacement program. Such systems would have to consider the number of years remaining as 15 minus the number of years they had completed in their initial replacement program (*i.e.*, a system resuming after conducting two years of replacement has 13 years in which to complete the program). In 1991, EPA established the maximum replacement schedule of 15 years for all systems. This was because the Agency believed that if systems were allowed to replace lead service lines as part of normal maintenance, it may take as long as 50 years before all of the problematic lead lines were replaced in some systems. EPA believed that it was necessary to accelerate the rate at which systems would otherwise replace lead service lines in order to ensure that public health is adequately protected (56 FR 26460 at 26507–26508, U.S. EPA, 1991d). Therefore, the Agency believes that systems that are exceeding the action level should have no more than 15 years to replace all of their lead service lines, as intended by the current rule.

4. What Issues Related to This Proposed Change Does EPA Request Comment on?

EPA requests comment on the proposal to require water systems to reevaluate lead service lines classified as ''replaced'' through testing if they resume lead service line replacement programs.

H. Request for Comment on Other Issues Related to the Lead and Copper Rule

The following subsection describes additional issues related to the Lead and Copper Rule for which the Agency is considering changes to regulations.

1. Plumbing Component Replacement

Some water systems may choose to replace plumbing fixtures, pipes, and components to greatly reduce the amount of lead or copper in tap water to a level below the action level. Generally this approach only applies to water systems that have 100% ownership over the plumbing infrastructure; some schools and other institutions can fall into this category. The Agency believes that this type of strategy can be cost-efficient and a more effective way to address corrosion of lead and copper. EPA is requesting comment as to whether plumbing replacement should be specifically defined as a corrosion control technique, or explicitly identified as an alternative to corrosion control optimization for small and medium systems.

Small water systems can use fixture replacement with existing provisions of the lead and copper rule to become optimized. Under § 141.81(b)(1), a small or medium-size system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with § 141.86. Thus, non-transient, non-community water systems, where 100% of the plumbing fixtures and components are directly controlled by the system, could replace them and be optimized once the system met the action level for two consecutive six-month monitoring periods.

Although water systems (typically non-transient non-community water systems) can replace pipes, fixtures and plumbing components to meet the lead or copper action level, this method of compliance is not specified in the LCR as a corrosion control technique. When a system exceeds the action level, it must initiate the treatment steps under § 141.81(e) that require the evaluation of corrosion control options and the recommendation of optimal corrosion control treatment. The current regulations could be read to require a small or medium system to perform evaluations of the corrosion control techniques listed in § 141.82(c)(1), even when the system is planning to replace plumbing components and is thus unlikely to install such corrosion control treatment. However, EPA

believes that there is sufficient flexibility under the current rule for systems that replace plumbing to qualify as optimized under § 141.81(b)(1) without having to undertake an unnecessary evaluation of corrosion control options. Under Section 141.81(e)(2), after an initial action level exceedance, the system has 12 months (or two monitoring periods) before the State makes a determination about requiring a corrosion control study. The plumbing replacement option, as a practical matter, is limited to small or medium non-transient, non-community water systems; under Section 141.81(e)(2)(ii), where the State does not require a system to conduct a corrosion control study, a system has 24 months after the action level exceedance (or four monitoring periods) before the State specifies optimal corrosion control treatment. As a result, very small water systems could replace the plumbing and conduct monitoring to demonstrate that the system is below the action level for two consecutive six-month monitoring periods within this 24-month period, although to do this, they would have to complete the plumbing replacement within 12 months of exceeding the action level. The Agency is requesting comment on whether there is enough existing flexibility under the current rule for very small systems to optimize using plumbing replacement or whether EPA should consider defining plumbing replacement as a corrosion control technique or as an alternative to corrosion control for small and medium systems. In particular, the Agency requests comment on whether 12 months is sufficient time for a small or medium system to replace plumbing components. If EPA were to allow States to specify plumbing replacement as a treatment option for small and medium systems, the systems would then have 24 months to complete the replacement, rather than the 12 months that they effectively have under the current rules.

EPA believes that there are a number of questions that would need to be resolved before listing plumbing component replacement as a corrosion control technique or an alternative to corrosion control. What materials should be used for replacement materials, since ''lead-free'' products still contain lead? What components would be replaced—just end-point devices such as faucets or would it also include in-line devices, such as valves and water meters? What would be the enforceable water quality parameters for this alternative to corrosion control? How would excursions from the optimal water quality parameters be measured? If these techniques are listed under § 141.81(c)(1) as corrosion control techniques, would all systems need to evaluate them as part of the corrosion control study? For systems that fail to meet the action level, would the State still need to specify the minimum pH values, even though the system may not be adjusting pH?

2. Point of Use and Point of Entry Treatment

Another strategy for reducing the lead or copper levels below the action level would be the use of point of use (POU) or point of entry (POE) devices. As with plumbing replacement, EPA is requesting comment as to whether use of POU or POE devices should be specifically defined as a corrosion control technique, or explicitly identified as an alternative to corrosion control optimization for small systems.

Both POU and POE devices are identified in the Safe Drinking Water Act (SDWA) as potential compliance technologies for small systems. In addition, the SDWA also lists a number of requirements for POU and POE devices if they are used as compliance technologies. These include: (1) POU and POE devices shall be owned, controlled and maintained by the public water system or by a person under contract to a public water system to ensure proper operation and maintenance and compliance with the treatment technique; (2) POU and POE devices must be equipped with mechanical warnings to ensure that customers are automatically notified of operational problems; and (3) if the American National Standards Institute (ANSI) has issued product standards applicable to a specific type of POU or POE treatment unit, individual units of that type shall not be accepted for compliance with a treatment technique requirement unless they are independently certified in accordance with such standards. The NSF/ANSI drinking water treatment unit standards do cover lead removal, so devices would need to be certified against one of the following standards: NSF/ANSI 53 Reduction Claims for Drinking Water Treatment Units—Health Effects, NSF/ANSI 58 Reduction Claims for Reverse Osmosis Drinking Water Treatment Systems, or NSF/ANSI 62 Reduction Claims for Drinking Water Distillation Systems.

One limitation with POE devices is that there can still be lead-containing plumbing after the POE device. Faucets, solder joints, etc. could still contribute high lead levels, so this approach may not be successful if the water is corrosive.

EPA believes that small systems can use POU devices, if they meet the SDWA requirements discussed above for their use, to comply with the lead and copper rule under existing provisions of the rule. Under § 141.81(b)(1), a small or medium-size system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with § 141.86. Thus, small water systems where POU devices are installed and meet the SDWA requirements could be optimized once the system met the action level for two consecutive six-month monitoring periods after their installation at all sites.

Although small water systems can use POU devices to meet the lead or copper action level, this method of compliance is not specified in the current LCR as a corrosion control technique. As a result, the same issue arises as discussed above with respect to plumbing replacement. The current regulations could be read to require a small system to perform evaluations of the corrosion control techniques listed in § 141.82(c)(1) even when the system is planning to install POU devices (in accordance with all applicable requirements of the SDWA) and is thus unlikely to install such corrosion control treatment.

EPA believes that there may be sufficient flexibility under the current rule for systems that use POU devices to qualify as optimized under § 141.81(b)(1) without having to undertake an unnecessary evaluation of corrosion control options. However, EPA recognizes that the same timing issue as discussed above for plumbing replacement may be a concern. Specifically, systems would effectively have only 12 months to install the POU devices at all required taps in order to be able to demonstrate two consecutive six-month monitoring periods where the action level was not exceeded, before the end of the 24-month deadline for installing corrosion control treatment. The Agency is requesting comment on whether there is enough existing flexibility under the current rule for small systems to optimize using POU devices or whether EPA should define POU devices as a corrosion control technique, or as an acceptable alternative to corrosion control for small systems, which would have the effect of giving systems 24 months rather than 12 months to install such treatment.

EPA believes that there are a number of questions that would need to be resolved before listing POU as an alternative to corrosion control. What

would be the enforceable water quality parameters for this alternative to corrosion control? How would excursions from the optimal water quality parameters be measured? If these techniques are listed under § 141.81(c)(1) as corrosion control techniques, would all systems need to evaluate them as part of the corrosion control study? For systems that fail to meet the action level, would the State still need to specify the minimum pH values, even though the system may not be adjusting pH?

3. Site Selection in Areas With Water Softeners and POU Treatment Units

The previous section discussed the use of POU or POE devices on a system-wide basis to remove lead and/or copper. However, many homes have whole house (point-of-entry) water softeners or treatment units at the kitchen tap (point-of-use), even though the system is not installing and maintaining these units. Section 141.86(a)(1) states that sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designated to remove inorganic contaminants. EPA requests comment upon whether the LCR should be amended to allow lead and copper tap samples to be collected at taps that have POU/POE devices under certain conditions.

Households may have reverse osmosis POU units that are capable of removing a number of contaminants, including lead and copper. These devices are typically installed with a separate tap at the kitchen sink. In systems where POU devices are not owned, controlled and maintained by the water systems, these sites could be included and still meet the requirements of § 141.86(a)(1) because samples could be taken from the regular untreated tap at the kitchen or a sample could be taken from an untreated bathroom tap. Since POU devices have not been installed system-wide, samples should not be taken from a POU treated tap at these sites.

Some areas of the country may find that the prevalence of POE water softeners restricts the ability of the water system to find homes where these units are not installed. This scenario is discussed in EPA's ''Lead and Copper Rule Guidance Manual Volume 1: Monitoring'' that was published in September 1991. Figure 3–2 in that manual described preferred sampling pool categories for targeted sampling sites. Category F.2 was listed as an exception case for water systems that only have sites where water softeners have been installed. This situation has been observed in the mid-western United States. The guidance states that these systems should select the highest risk sites (newest lead solder or lead service lines) and monitor at those locations even though the water softener is present.

The Agency is requesting public comment on whether the Lead and Copper Rule should be amended to allow sampling at locations with POU/POE devices used to remove inorganic contaminants in exceptional cases (such as systems with high prevalence of water softeners), and if so, how high risk sites in these locations should be identified. EPA specifically requests comment on whether the Agency should codify the guidance provision discussed above.

4. Water Quality Parameter Monitoring

The Agency requests comment on requiring systems to synchronize required water quality parameter sampling with lead and copper tap sampling. This would allow systems the ability to associate changes in water quality parameter levels with lead and copper levels and help systems monitor the effectiveness of their corrosion control program. EPA is aware of one State that has been instructing water systems with corrosion control treatment programs to collect water quality parameter samples during the same week the systems collect lead and copper tap samples. This State has observed that elevated lead levels have been frequently associated with low corrosion inhibitor or orthophosphate residuals in the distribution systems, and occasionally with low pH.

Under the current rule, systems that have installed and operate corrosion control treatment per Section 141.82(c)(1) and 141.82(g) must monitor water quality parameters per Section 141.87(d). The number of water quality parameter tap samples depends on the population size served by the water system as detailed in 141.87(a)(2) and 141.87(e)(1). The frequency of water quality parameter monitoring at taps in the distribution system ranges from twice every six months to twice every three years as described in 141.87(e). Systems required to monitor for water quality parameters must also collect one sample for each applicable water quality parameter at each entry point to the distribution system every two weeks.

Water quality parameters are designated by the State primacy agency under 141.82(d). They typically include pH, alkalinity, and corrosion inhibitor residual. These parameters will vary based on the type of corrosion control a system installs and the State may designate additional parameters.

EPA is requesting comment upon a modification that would not increase the number of samples a system would be required to take, but would synchronize sampling they are required to do under the current rule. Large systems would be required to take their required lead and copper samples at the same time they take their required water quality parameter samples. Small and medium systems would be required to take their water quality parameter samples at the same time as their lead and copper samples required by Section 141.81(c) during the compliance period following the monitoring period in which they exceeded the lead or copper action level and all subsequent monitoring periods in which they are scheduled to take both water quality parameter and lead and copper tap samples.

Currently, if a small or medium system has an action level exceedance, they are required to take water quality parameter samples within the same six-month period according to Section 141.87(d). EPA is not requesting comment on whether to require these systems synchronize water quality monitoring with lead and copper monitoring under this circumstance. The Agency is only requesting comment on whether to require these small and medium systems to synchronize water quality monitoring and lead and copper monitoring during the compliance period following the circumstance described in Section 141.87(d) and all subsequent monitoring periods in which they are scheduled to take both water quality parameter and lead and copper tap samples.

The Agency requests comment on including this potential modification in the final rule. EPA requests comment on what, if any, added burden it may present to water systems. The Agency also requests comment on the appropriate time frame for synchronizing water quality parameter monitoring with lead and copper monitoring. Should systems be required to take water quality parameter and lead and copper samples on the same day or within the same week within a monitoring period? What are the practical constraints associated with different time frames?

I. State Implementation

States with approved primacy programs under 40 CFR part 142 subpart B must revise their programs to adopt any changes to the Lead and Copper Rule that are more stringent than their approved program. The primacy revision crosswalk table issued after the rule is final will list all the provisions

that States must adopt to retain primacy. Table III.1 summarizes the revisions being proposed today and identifies those that the Agency believes to be more stringent requirements.

TABLE III.1.—REVISIONS IN THIS PROPOSAL

CFR citation	Is the requirement more stringent?	Revision
§ 141.80 (a)(2)	No	Technical correction that deletes effective dates of the LCR which no longer apply.
§ 141.80(g)	Yes	PWSs will be required to provide consumers with the results of lead testing who are located at sites that are part of the utility's monitoring program.
§ 141.81(b)(3)(iii), § 141.86(d)(4)(vii), § 141.86(g)(4)(iii), § 141.90(a)(3).	Yes	States must approve new sources or changes in water treatment before PWS implementation.
§ 141.81(e)(1)	Yes	Clarifies end of the tap sampling and timing for PWS recommending optimum corrosion treatment.
§ 141.81(e)(2)	Yes	Clarifies end of the monitoring period and timing for State requiring corrosion control studies.
§ 141.81(e)(2)(i), § 141.81(e)(2)(ii)	Yes	Clarifies end of the monitoring period and timing for State specifying optimum corrosion control treatment.
§ 141.83(a)(1)	Yes	Clarifies end of the source water monitoring period and timing for recommending source water treatment to the State.
§ 141.84(b)(1)	Yes	Clarifies beginning of the first year for lead service line replacement.
§ 141.84(b)(2)	Yes	Requires updating inventory and yearly replacement of lead lines when resuming lead service line replacement program.
§ 141.90(e)(2)(ii)	Yes	Clarifies resumption of line replacement.
§ 141.85	Yes	New public education requirements that replace the ones that exist in the current rule. New requirement that allows PWS to use alternative flushing time language in public education material. New requirement for PWS to target specific audiences for increased awareness. New requirement for PWS to provide a notice to consumers who are part of the utility's lead testing program with sampling results.
§ 141.88 (b), § 141.90(a)(1), § 141.90(e)(1), § 141.90 (e)(2)	Yes	Clarifies end of the monitoring period.
§ 141.86(c)	No	Requires NTNCWS to collect a specified number of samples.
§ 141.86(d)(4)(i), (ii), (iii), § 141.86(d)(4)(vi)(B)(1), § 141.86(g)(4)(i), § 141.87(e)(2)(ii), § 141.88(d)(1)(i), § 141.88(d)(1)(ii).	Yes	Clarifies sample collection periods for reduced monitoring.
§ 141.86(d)(4)(vi)(A)	Yes	Specifies time period to resume standard tap water monitoring.
§ 141.86(d)(4)(vi)(B)	Yes	Specifies time period to resume water quality parameter monitoring.
§ 141.86(d)(4)(ii)	Yes	Clarifies monitoring frequency.
§ 141.81(b)(3)(iii), § 141.86(d)(4)(vii), § 141.86(g)(4)(iii), § 141.90(a)(3).	Yes	Requires systems to notify State prior to making changes in treatment or adding new sources.
§ 141.87(d), § 141.87(e)(2)(i)	Yes	Clarifies time period for water quality parameter monitoring.
§ 141.154 (d)(1)–(3)	Yes	PWS must include a statement about lead, health effects language and ways to reduce exposure in CCRs, if the water system detects any level of lead above the method detection limit of 0.001 mg/L in their drinking water. Flexibility is given to PWS to write its own educational statement, but only in consultation with the Primacy Agency.
§ 141.90 (f)(1), § 141.90 (f)(1)(i)	Yes	Revised public education program reporting requirements based on amendments to § 141.85.

1. How Do These Regulatory Revisions Affect a State's Primacy Program?

States must revise their programs to adopt any part of the proposal which is more stringent than the approved State program. Primacy revisions must be completed in accordance with 40 CFR 142.12 and 142.16. States must submit their revised primacy application to the Administrator for approval. State requests for final approval must be submitted to the Administrator no later than two years after promulgation of a new standard unless the State requests and is granted an additional two-year extension.

For revisions of State programs, § 142.12 requires States to submit, among other things, ''[a]ny additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate (§ 142.12(c)(1)(ii)).'' For the proposed revisions to the lead and copper rule, EPA believes that requirements in § 142.12(c) will provide sufficient information for EPA review of the State revision. The side-by-side comparison of requirements required in § 142.12(c)(1)(i) will consist of sections revised to adopt the changes required for the revised lead and copper rule and any other revisions requested by the State. Because the rule consists of changes to an already approved federal NPDWR in primacy States, EPA believes that the State's existing statutes and regulations will already have received extensive legal review. Under § 142.12 (c)(3), EPA can request supplemental

information as necessary for a specific State submittal on a case-by-case basis. Therefore, the Agency plans to waive the Attorney General's statement required in § 142.12(c)(1)(iii), as allowed by § 141.12(c)(2). The Agency requests comment on whether the Attorney General's statement or any other documentation is necessary to approve revisions to State programs resulting from the rule.

2. What Does a State Have To Do to Apply?

To maintain primacy for the Public Water System Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt this proposal, when final. A State must submit a request for approval of program revisions that adopt the regulations and implement those regulations within two years of promulgation unless EPA approves an extension under § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

3. How Are Tribes Affected?

At this time the Navajo Nation has primacy to enforce the PWSS program. EPA Regions implement the rules for all the other Tribes under section 1451(a)(1) of SDWA.

J. Limitations to Public Comment on the Lead and Copper Rule

EPA requests comment on the seven specific regulatory changes proposed today to revise the national primary drinking water regulations for lead and copper, as well as several related issues. Please note that the Agency is not proposing to revise the Lead Action Level or any major component of lead drinking water regulations. EPA is not reopening the entire Lead and Copper Rule, but rather is requesting comment on the rule changes and related issues specifically discussed in this proposal. In this rulemaking, the Agency will not consider comments that address other aspects of drinking water regulations for lead and copper.

K. Proposed Effective Dates

Section 1412 (b)(10) of the Safe Drinking Water Act, requires that a proposed national primary drinking water regulation (and any amendments) take effect on the date that is three years after the date of promulgation, unless the Administrator determines that an earlier date is practicable. EPA is proposing that the revisions take effect three years after the promulgation of the final rule. Because several of the provisions in this rule would likely not require three years for implementation the Agency is considering whether to make some of these regulatory changes effective in less than three years after the date of publication of the final rule. Specifically, EPA requests comment on whether it would be practicable to implement the following changes and clarifications in this proposal to the Lead and Copper Rule within 60 days of the date of publication of the final rule:

- Section III.A. Minimum Number Of Samples Required
- Section III.B. Definitions For Compliance And Monitoring Periods
- Section III.E. Requirement To Provide A Consumer Notice Of Lead Tap Water Monitoring Results To Consumers Who Occupy Homes Or Buildings That Are Tested For Lead
- Section III.F. Public Education Requirements

The requirements described in Section III.A (minimum number of samples clarification) is merely a clarification of existing regulatory text and does not change the stringency of the rule. In Section III.B (compliance and monitoring period clarification) there are changes that clarify existing text of the rule as well. The requirements described in Section III.E (the consumer notice) and Section III.F (public education requirements) are some of the most important in this proposal. Those requirements are critical to the explanation of lead exposure from drinking water and communication of health effects to the public; and while they add requirements to the rule, systems are not likely to need three full years to implement the new requirements.

The Agency requests comment on whether these regulatory revisions should have effective dates of sixty days after the publication of the final rule and if not, what timeframes are practicable. The Agency also requests comment on whether any of the other proposed revisions in this rule should have an effective date earlier than three years after publication of the final rule.

IV. Economic Analysis

This section describes the estimates of annual costs for the seven proposed regulatory changes to utilities and States, including costs associated with administrative, monitoring, sampling, reporting, and notification activities. One-time, upfront costs of rule review and rule implementation are also described. There are two types of annual costs that may result from the rule changes—direct and indirect. Direct costs are from those activities that are specified by the rule change, such as costs for additional monitoring or distribution of consumer notices. A second type of cost may also result when systems and States use the information generated by directly-related rule activities to modify or enhance practices to reduce lead levels. These indirect costs, and related health risk reductions, are not quantified for the purposes of this analysis, but are described qualitatively in Section IV.K of this proposal and in Chapter 5 of the Economic Analysis (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, U.S. EPA, 2006b). Table IV.1 summarizes the expected direct and indirect cost impacts for the seven regulatory changes.

TABLE IV.1.—SUMMARY OF DIRECT AND INDIRECT IMPLICATIONS OF THE LCR SHORT TERM RULE CHANGES

Rule change	Direct cost implications	Indirect cost and health risk implications
Regulatory Change III.A (Number of samples)	Minimal, unquantified	Yes.
Regulatory Change III.B (Monitoring Period)	Minimal, unquantified	None.
Regulatory Change III.C (Reduced Monitoring Criteria)	Yes	Yes.
Regulatory Change III.D (Advanced Notification and Approval)	Yes	Yes.
Regulatory Change III.E (Consumer Notice of Lead Results)	Yes	Yes.
Regulatory Change III.F (Public Education)	Yes	Yes.
Regulatory Change III.G (Reevaluation of Lead Service Lines)	Yes	Yes.

A. Direct Costs

The proposed revisions will result in direct costs to utilities and States from activities that are specified by the rule change, including administrative, monitoring, sampling, reporting, and notification activities. These costs will result in an increase in the overall costs associated with the LCR.

The most recent cost estimates to utilities and States of the LCR can be found in the 2004 Information Collection Request for Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules (Information Collection Request for Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules, U.S. EPA 2004b). The 2004 ICR estimates administrative burden and costs associated with the LCR for systems and States. System costs are estimated for community water systems and non-transient non-community water systems to perform the following activities: monitoring for water quality parameters, tap sampling of lead levels for action level compliance, review of sample data, including the calculation of lead and copper 90th percentile levels, submission to the State of monitoring data and any other documents or reports, and recording and maintaining information. In addition, some systems must submit corrosion control studies, recommend and submit information regarding the completion of corrosion control treatment (CCT) or source water treatment installation, conduct public education, or conduct LSL monitoring, notification, and replacement. In the 2004 ICR, for the LCR requirements to CWSs and NTNCWSs, the average annual respondent cost was estimated to be $57.9 million and the burden was estimated to be 1.72 million hours for reporting (including lead service line replacement reporting), recordkeeping, and public education activities of the LCR. For States, the annual cost and burden incurred by primacy agencies for activities associated with the lead and copper regulation were estimated to be $6.8 million and 0.21 million hours, respectively.

B. Overall Cost Methodologies and Assumptions

As part of its comprehensive review of the Lead and Copper Rule, EPA collected and analyzed new data on various aspects of LCR implementation. When available and appropriate, this new information is used in estimating costs. If new information was not available about a cost item or assumption, previous analyses of LCR requirements were reviewed to determine if a suitable estimate was available. The 1991 RIA, the 1996 RIA Addendum, and the various Information Collection Requests were all used as sources of information and assumptions.

For the rule revisions that clarify rule language, if the costs associated with those activities were included in the original LCR cost estimates as presented in the 1991 RIA, those costs are not included in this analysis.

C. Direct Costs Associated With Regulatory Change III.A

Regulatory change III.A clarifies EPA's intent that a minimum of 5 samples must be taken when conducting compliance monitoring. If a system has fewer than the minimum number of sites required for sampling, then those systems will have to collect multiple samples on different days from the same site so that the total number of samples per monitoring period is 5.

Although some systems may have to increase the number of samples taken in response to this clarification, there is very limited available data on the number of these systems and on the frequency with which they conduct lead and copper monitoring. Because of lack of data, EPA has not quantified the costs associated with Regulatory Change III.A. In EPA's best judgment, these costs would be minimal.

D. Direct Costs Associated With Regulatory Change III.B

Regulatory Change III.B clarifies the meaning of ''monitoring period'' and ''compliance period,'' addressing in particular the date on which actions are triggered by an exceedance and the timing of samples under triennial monitoring. Based on the rule change, if a system exceeds the action level during a monitoring period, non-compliance starts at the end of the monitoring period (for most systems on September 30). Under the previous language, it was not clear whether non-compliance began at the end of the calendar year (December 31) or at the end of the monitoring period (September 30).

As a result of the rule change, activities triggered by an action level exceedance could begin three months earlier (i.e., at the end of September versus the end of December), but the duration of these activities would not likely be longer. The net result is a change in the timing of activities, with a difference of three months having a negligible, if any, impact on costs.

Regulatory Change III.B also requires that systems on reduced monitoring, such as triennially or once every nine years, must take all compliance samples within the same calendar year during the June–September monitoring period. Under previous LCR regulatory language, a system could collect compliance samples over multiple calendar years, as long as they were taken during the June–September time frame and during the three-year compliance period. Since this rule change does not alter the number of samples to be taken, but the timing of samples, the direct cost impact is expected to be minimal.

E. Direct Costs Associated With Regulatory Change III.C

1. Activities Resulting From Regulatory Change

As a result of Regulatory Change III.C, utilities that have 90th percentile LCR monitoring samples that exceed the Lead Action Level, and are currently on reduced monitoring, will be required to resume standard monitoring schedules for monitoring lead at taps. In addition to monitoring activities, utilities will have to meet reporting requirements to the State/Primacy agency. State/Primacy agencies will be required to review utility monitoring reports.

2. Costs to Utilities

The direct costs to utilities, summarized in Table IV.3, are estimated to be $2.4 million annually including $2.2 million in labor costs and $0.2 million in materials costs. Detailed estimates are provided in the Economic Analysis, Appendix C (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix C, U.S. EPA 2006b).

The systems that will incur costs under this regulatory change are those systems that exceed the Lead Action Level and that had been on reduced monitoring. The number of systems EPA estimates to exceed the Lead Action Level each year is 995 as shown in Table IV.2. This estimate is based upon 2003 Lead Action Level exceedances reported by States to EPA's Safe Drinking Water Information System for systems serving more than 3300 people. EPA used this data to estimate that 1.4 percent of systems (including system serving fewer than 3300 people) will exceed the action level each year.

TABLE IV.2.—SYSTEMS OVER THE ACTION LEVEL SINCE 2003

	[1]<3,300	3,300<50,000	>50,000	Total
Number of systems above Action Level since 2003	884	97	14	995
Total number of systems	64,382	7,388	819	72,589
Percent of systems with monitoring results since 2003 over AL	1.4	1.3	1.7	1.4

[1] The Estimate for systems <3,300 is based upon data from systems >3,300.

Source: For medium and large systems, January 2005 Summary of Lead Action Level, *http://www.epa.gov/safewater/lcrmr/lead_data.html;* for small systems, Summary, Lead Action Level exceedances for public water systems subject to the Lead and Copper Rule (For data through September 13, 2004).

The number of systems on reduced monitoring was estimated using state responses to the EPA survey on LCR implementation (State Implementation of the Lead and Copper Rule. U.S. EPA 2004d). States provided estimates of the percent of systems on reduced LCR monitoring. Based on this data, 91 percent of systems are on reduced lead and copper monitoring. This analysis assumes that systems that are likely to exceed the action level, and are on reduced monitoring, are likely to exceed at the same rate as all systems. Therefore, we assume that 91 percent of the systems estimated as likely to exceed the action level are on reduced monitoring, and will therefore incur costs due to regulatory change III.C. This assumption is conservative, because systems that are likely to have exceedances are less likely to be on reduced monitoring in the first place.

For the number of additional monitoring events, it is assumed that each utility will conduct 5 additional monitoring events in each three year period by switching from a reduced monitoring schedule (triennial) to standard tap monitoring (semi-annual). While reduced monitoring could refer to either monitoring once every year or once every three years, it is not possible to distinguish, from the state responses to the EPA survey, between systems monitoring once every year and systems monitoring once every three years. This analysis assumes that all systems on reduced monitoring are on a one sample every three years schedule, a conservative assumption that might slightly over-estimate costs. Likewise, the number of samples collected in each monitoring period will change when the utility switches from reduced monitoring to standard monitoring. Thus, a system that was on reduced monitoring, but is placed on regular monitoring after an Action Level exceedance under regulatory change III.C, will incur an additional 5 monitoring events over a 3 year period (6 monitoring events in three years under regular monitoring instead of 1 monitoring event in three years under reduced monitoring), with an increased number of samples collected in each event. The required number of samples varies by system size, with the smallest systems (serving less than or equal to 100 people) required to take 5 samples per monitoring event under both standard and reduced monitoring, and the largest systems (serving > 100,000 people) required to take 100 samples per monitoring event under standard monitoring, and 50 samples per monitoring event under reduced monitoring.

3. Costs to States

Regulatory Change III.C will require State/Primacy agencies to review utility monitoring reports as a result of resuming standard monitoring schedules. The direct costs to State/Primacy agencies is estimated to be $77,000 annually including $76,000 in labor costs and $1000 in materials costs, as summarized in Table IV.3. Detailed estimates are included in the Economic Analysis, Appendix C (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix C, U.S. EPA, 2006b).

TABLE IV.3.—SUMMARY OF ESTIMATED DIRECT COSTS TO SYSTEMS AND STATE/PRIMACY AGENCIES ASSOCIATED WITH REGULATORY CHANGE III.C

	Annual labor	Annual materials	Total annual
Costs to Systems:			
Reporting	$56,000	$1000	$57,000
Tap Monitoring	2,157,000	214,000	2,371,000
Total System Costs	2,213,000	215,000	2,428,000
Costs to State/Primacy Agencies:			
Review Costs	76,000	1000	77,000
Total State Costs	76,000	1000	77,000

F. Direct Costs Associated With Regulatory Change III.D

1. Activities Resulting From Regulatory Change

Regulatory Change III.D requires water systems to obtain prior approval by the State primacy agency to add a new source of water or change a treatment process prior to implementation. The current requirement is that systems notify States about changes in treatment or additions of new sources within 60 days of a change or addition. The proposed regulatory language allows as much time as needed for water systems and States to consult before a proposed change is approved.

New system activities will include the preparation of the corrosiveness implications of treatment or source changes prior to the change and a letter to the state. New State/Primacy agency activities will include review of the system data on the corrosiveness

implications of a treatment or source change prior to a change, preparation of conclusions and coordination with utilities. The estimated costs to the affected systems and State/primacy agencies are summarized in Table IV.4.

2. Costs to Utilities

The direct costs to utilities range from $474,000 to $733,000 annually. These direct costs are strictly labor costs; materials costs are expected to be negligible. Estimates are summarized in Table IV.4. Detailed estimates are provided in Appendix D (Table 6.1) of the Economic Analysis (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix D, U.S. EPA, 2006b).

In order to estimate the cost of this provision to utilities, information is needed on the number of systems that will change a treatment or add a source annually, as well as the number of systems that are located in States that already have a review and approval requirement. Systems located in these States will not incur additional costs under this provision.

Many States already have a review and approval process for treatment or source changes. In 2004, as part of a review of the implementation of LCR requirements by States, EPA asked State programs a number of questions about how they implement different aspects of the LCR. Included were the following questions: ''How do systems notify the State of treatment changes? Does the State require that systems provide information about potential effects of treatment changes on corrosion control?''

14 States indicated that they currently have a review and approval process for treatment changes. Another nine States have a process that requires a permit for treatment changes and an additional eight States review submissions of engineering plans for proposed changes. Although not a review and approval process focused specifically on the impact of a change on corrosion control, the permitting and plan review processes are comprehensive enough that they should include corrosion issues. For the purposes of this analysis, two estimates were used of the number of States that already have a review and approval process that would include information on corrosion issues: 14 States for a high end of the cost range and 31 States for a low end. Under the alternative in which only the 14 States with explicit review and approval are excluded from the count, 53,372 systems (of 72,213 CWSs and NTNCWSs) may incur costs for the regulatory change. Under the alternative in which States with permitting and plan review are also excluded from the count, 27,615 systems may incur costs for this regulatory provision.

An estimate is also needed of the number of systems that will change a treatment or add a source annually, in order to estimate the cost of this provision to utilities. Treatment changes over the next several years are likely, as systems will be faced with new regulatory requirements, including changes to comply with the already promulgated Arsenic Rule and the upcoming Long Term 2 Surface Water Treatment Rule and the Stage 2 Disinfectants/Disinfection Byproducts Rule. EPA estimated the number of systems that would undertake treatment changes for the following new regulatory requirements:

- Arsenic—4,100 systems (Data source: Arsenic in Drinking Water EA, pp. 6–25, 6–27;
- LT2—2,968 systems (Data source: June 2003 draft EA, pp. 6–23, 4–23);
- Stage 2 D/DBP—1,824 systems (Data source: July 2003 draft EA, pp. 6–35, 6–30).

Together, these regulatory requirements are estimated to cause 8,892 systems to institute a treatment change, although not all of these treatment changes will affect corrosion control. Also the compliance periods for these regulations varies. For example, the Stage 2 and LT2 treatment changes are projected to take place within a 6 year compliance period for large systems (with the possibility of 2-year extension) and 8 years for small systems (with the possibility of 2-year extension). To account for these expected treatment changes, and to account for treatment changes unrelated to the arsenic, LT2, and Stage 2 rules, EPA assumed (based on the projected rule-related treatment changes and expert judgment) that approximately 20% of the systems affected by the LCR will institute a treatment change in the next ten years. It is assumed that these changes occur uniformly over that 10-year period, so that approximately one-tenth of these systems (or 2 percent of the total) institute a treatment change each year.

Using the 2 percent estimate, 1,067 ($53,372 \times .02$) systems each year would report a treatment change or source addition and incur costs in that year in States currently not covered by an explicit review and approval program. The estimate for the number of systems is 552 if States with a permitting or plan approval process are also excluded.

EPA anticipates that systems will incur additional costs under this rule change as systems and States more carefully review and consider possible corrosion impacts of treatment changes or source additions. The activities and burden associated with the review and approval process are expected to vary based on the size and complexity of a system, and the nature of the change or source addition. In the absence of information on the current prevalence of these activities, EPA has used the best professional judgment to estimate the range of potential activities and associated costs resulting from the review and approval process. All systems, regardless of size or complexity, are assumed to undertake additional activities related to data collection and evaluation, preparation of a submittal to the State, and coordination with the State. For small systems or systems making relatively simple changes, considering the corrosion impacts of the change may be a rather basic process of reviewing water quality data and previous lead monitoring results. For these systems, additional effort will be incurred by system staff in coordination with State personnel to assemble water quality parameter and lead data and evaluate the potential impacts. EPA estimates the burden for this additional effort at 7.5 hours per system, at an average cost of $201 per system. For larger or more complex systems making major treatment changes, activities would be more extensive, including conducting engineering studies to evaluate impacts on corrosion control. Based on best professional judgment, EPA estimates that between 10 percent and 20 percent of medium and large systems may need to conduct additional engineering studies on corrosion impacts at a cost of $20,000. To some extent, systems may already evaluate the impacts of treatment or source changes on corrosion. EPA has considered these current activities in estimating the portion of systems that would require an engineering study.

3. Costs to States

The direct costs to State/Primacy agencies are estimated to range from $153,000 to $328,000 annually. These direct costs are strictly labor costs; materials costs are expected to be negligible. Estimates are summarized in Table IV.4. Activities that States will undertake include review of system data, preparation of conclusions and letter to systems, and coordination with utilities. Because the level of effort associated with these activities is expected to vary based on the complexity of the change and the type of submittal (amount and type of

information), EPA included a range on State review from 4 to 8 hours.

Those States incurring additional costs due to regulatory change III.D are those that do not already have a review and approval process which considers the corrosion control implications of treatment changes. All States currently review treatment or source changes within 60 days after the change. However, some States are already reviewing and issuing approval before such changes are made. Based on the State program responses to the EPA questions on the implementation of LCR requirements (on existing review and approval processes), the analysis assumes either that 14 States have existing explicit review and approval processes or that 31 States have existing review and approval processes (if permit and plan review processes are also counted). The remaining States under each alternative will incur costs under this regulatory change as they review and approve changes before they are made, rather than simple review after the change has been made.

For the States that will incur new costs, new State/Primacy agency activities will include review of the system data on the corrosiveness implications of a treatment or source change prior to a change, preparation of conclusions and coordination with utilities.

TABLE IV.4.—ESTIMATED DIRECT COSTS TO SYSTEMS AND STATE/PRIMACY AGENCIES ASSOCIATED WITH REGULATORY CHANGE III.D

	Annual cost—low estimate [1]	Annual cost—high estimate [2]
Costs to Systems:		
Reporting	$474,000	$733,000
Total System Costs	474,000	733,000
Costs to State/Primacy Agencies:		
Review Costs	153,000	328,000
Total State Costs	153,000	328,000

[1] 10 percent medium and large systems conduct engineering study and 4 hours for State review.
[2] 20 percent medium and large systems conduct engineering study and 8 hours for State review.

G. Direct Costs Associated With Regulatory Change III.E

1. Activities Resulting From Regulatory Change

Regulatory Change III.E will require CWSs to provide written notification to each owner/occupant of the lead level found in the tap sample collected for LCR compliance monitoring. Compliance for NTNCWSs will be determined by their circumstances, and may consist of posting a notice on community bulletin boards or web sites. While State primacy agencies may review sample customer letters/notices from each utility for each monitoring period, such a review is not required by the regulatory change and thus is not considered a direct cost of the regulatory change. Supporting calculations and information regarding costs to utilities and States associated with this regulatory change are included in the Economic Analyses, Appendix E (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix E, U.S. EPA, 2006b).

2. Costs to Utilities

The direct costs to utilities for compliance with Regulatory Change III.E are summarized in Exhibit 4 and estimated to be $1,028,000 annually including $894,000 in labor costs and $134,000 in materials costs for envelopes and postage. This is based on 310,510 notices being provided to customers each year, with estimated associated labor. Detailed estimates are provided in the Economic Analysis, Appendix E–2 (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix E, U.S. EPA, 2006b).

In order to estimate the additional costs associated with regulatory change III.E, an estimate is needed of the number of systems that already notify customers of tap monitoring results. Based on feedback from participants in workshops and interactions with States, some systems already notify customers of monitoring results. These systems would not incur costs under the proposed regulatory change. This analysis uses information from the State survey (State Implementation of the Lead and Copper Rule. U.S. EPA, 2004) to develop an estimate of the number of systems that currently notify customers of tap sampling results. Of 72,213 CWS and NTNCWSs (per 2004 SDWIS/Fed data) subject to the LCR, approximately 11 percent of these systems are estimated to already notify owner/occupants of tap sample results. Therefore, this regulatory change will apply to the remaining 89 percent of systems.

3. Costs to States

No new costs to States are assumed. States are not required to review the notification letter or notice.

TABLE IV.5.—SUMMARY OF DIRECT COSTS ASSOCIATED WITH REGULATORY CHANGE III.E

	Annual labor	Annual materials	Total annual
Costs to Systems:			
Customer Notice of Lead Results Costs	$894,000	$134,000	$1,028,000
Total System Costs	894,000	134,000	1,028,000

H. Direct Costs Associated With Regulatory Change III.F

Regulatory Change III.F changes the public education requirements of the Lead and Copper Rule (LCR) in § 141.85. Water systems would still be required to deliver public education materials after a Lead Action Level exceedance, but the text of the message to be provided to consumers, how the materials are delivered to consumers, and the timeframe in which materials must be delivered would change. The changes to the delivery requirements include additions to the list of organizations systems must partner with to disseminate the message to at-risk populations as well as changes to the media used to ensure water systems reach consumers when there is an action level exceedance.

In addition to the changes to § 141.85 of the LCR, revisions will be made to § 141.154(d) of the CCR rule (40 CFR 141, Subpart O) which requires community water systems to send an annual report to billed customers containing information relevant to the quality of the drinking water provided by the system. EPA is proposing to change the CCR rule to require all community water systems that detect lead to include information about the risks of lead in drinking water on a regular basis.

1. Activities Resulting From Regulatory Change

(a) Changes to the mandatory text of the written materials.

(a)(1) Customer Notification: Deliver brochures to all bill-paying customers within 60 days.

The brochure will include a section on ''What happened? What is being done?'' to be developed by each water system. Mandatory language will address essential topics such as the opening statement and health effects language. The mandatory language will be shorter and easier to understand than the language that is currently used. EPA will develop suggested language.

(b) Changes to better reach at-risk populations.

(b)(1) Brochures will be delivered to additional organizations, with a cover letter.

The organizations to be added to the list of required recipients of the brochures will increase the likelihood that the most vulnerable populations or their caregivers will receive the information they need to reduce their exposure to lead in drinking water. These organizations will include licensed childcare centers, preschools and Obstetricians-Gynecologists and Midwives. Also, local public health agencies will be contacted by phone.

(b)(2) Systems will perform additional activities.

Systems serving more than 3,300 will be required to implement three or more activities from a list of possible activities. Systems serving fewer than 3,300 will be required to implement one activity from the list. A list of nine possible activities follows (including a general ''other methods'' because the primacy agency may also approve other methods). An estimate of the annual cost of each identified activity is given in Table IV.6.

(i) Public Service Announcement: Production of a radio PSA includes developing a script for the spot and then producing an audio of the spot.

(ii) Paid advertisement.

(iii) Information display in public areas: Posting a notice at a local grocery store or laundromat.

(iv) Internet: Email contact with all customers.

(v) Public Meetings: For systems serving fewer than 3,300, system representatives would bring up the issue for discussion at an existing town meeting. For systems serving over 3,300, a separate public meeting would be held. This activity includes making logistical arrangements, preparing a 30–45 minute presentation, attending the meeting, and doing follow-up activities such as meeting notes.

(vi) Delivery to every household: Delivery to every postal address, either through mail or distribution of flyers.

(vii) Targeted individual contact with customers: Especially vulnerable customers, such as pregnant women and children, would be individually contacted.

(viii) Materials to be provided directly to multi-family homes and institutions.

(ix) Other methods approved by the primacy agency.

TABLE IV.6.—ANNUAL COST PER SYSTEM ESTIMATE FOR ADDITIONAL ACTIVITIES TO BETTER REACH AT-RISK POPULATIONS

System size category	i. Public service announcements	ii. Paid advertisements	iii. Display in public areas	iv. Internet notification	v. Public meetings	vi. Delivery to every household	vii. Targeted contact	viii. Materials directly to multi-family & institutions	Average per system all activities
25–100	$95	$105	$23	$23	$45	$7	$34	$12	$43
101–500	95	105	25	24	45	30	34	14	47
501–3,300	95	180	106	26	45	166	36	26	85
3.3K–10K	95	180	108	384	800	435	42	66	264
10K–50K	1,400	850	556	526	2,200	1,114	64	247	870
50K–100K	1,400	5,000	1,111	526	2,900	2,448	135	771	1,786
>100K	1,400	5,000	3,330	912	5,000	3,874	548	4,311	3,047

Details of how these unit costs were calculated are provided in Appendices H–6 through H–20 of the Economic Analysis for the rule.

(b)(3) Review activities for States.

States will review the language in the utility's notice to consumers to make sure the utility is including the required information. States will also consult with each system with an action level exceedance. States will no longer be required to approve a waiver for notifications for each system that exceeds the Lead Action Level that serves a population of 501–3,300.

(c) Changes to help systems maintain communication with consumers throughout the exceedance.

(c)(1) Every water bill will contain a message about lead while a system is exceeding the action level.

(c)(2) Post brochure on Web site if system serves >100,000 people.

(c)(3) Public service announcements and press releases.

The requirement to send public service announcements (PSAs) to TV stations and radio stations every six months while a system has an Lead Action Level exceedance will be cut to once every year. The PSA must be sent to five TV stations and five radio stations. A press release will still have to be submitted to newspapers, TV stations and radio stations.

(d) Changes to the required timing.

No cost impact.

(e) Changes to Consumer Confidence Report.

(e)(1) Inclusion of an informational statement on CCR for all systems.

Systems that detect lead in their drinking water will have to include an informational statement about lead in their CCR. Currently, only those systems with more than five percent of their sites above the Lead Action Level must include an informational statement in their CCR.

2. Costs to Utilities

The direct costs to utilities as a result of Regulatory Change III.F are estimated to be $780,500. The annual system labor cost is estimated to be $759,500, with the annual system materials cost $21,000. Estimates of costs associated with each activity are given in Table IV.7. Detailed estimates of costs to utilities are provided in the Economic Analysis, Appendix F (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix F, U.S. EPA, 2006b). The costs for the CCR component may be overstated because EPA does not have specific data to determine the percentage of systems that will not detect lead. Thus, we have assumed that all systems will detect lead in their water, which may lead to an overstatement of the cost estimates shown in Table IV.7. In addition, the requirement to provide information about lead in the CCR would be new only for systems that currently detect lead below the action level in 95% or more of their sites, since systems in which the 95th percentile result is above the action level are already required to provide such information. However, EPA does not have data on such systems. Rather, EPA has data on the (smaller) number of systems that currently detect lead below the action level in 90% of their sites, and has subtracted this value from the universe of systems to estimate the number of systems that would incur new costs under this requirement. Thus, there are two factors contributing to a possible overestimate in the national cost for the CCR statement. The first factor is that assuming all systems will detect lead overestimates the number of systems that will actually detect lead, because some systems do not detect any lead. The second factor is that underestimating the current baseline of systems that currently detect lead at the 95th percentile level, by using data on systems that detect lead at the 90th percentile level (a smaller number of systems), overestimates the remaining number of systems that do not currently report lead information in their CCR. EPA's estimate assumes that 52,257 additional systems would have to provide information about lead in their CCR each year, with additional associated labor of 0.25 hours per system per year.

TABLE IV.7.—SUMMARY OF PRELIMINARY COSTS TO SYSTEMS DUE TO LCR PUBLIC EDUCATION PROPOSED CHANGES

Activity	Requirement	Annual labor	Annual materials	Total system cost
a. Changes to the Mandatory Text of the Written Materials				
III.F(a)(1)	Customer Notification	$84,900	$0	$84,900
b. Changes to Better Reach At-Risk Populations				
III.F(b)(1)	Notify Additional Organizations	18,700	21,400	40,100
III.F(b)(2)	Additional Activities i–viii	275,100	0	275,100
III.F(b)(2)	Consult with State on Activities	14,400	0	14,400
c. Changes to Help Systems Maintain Communication With Consumers Throughout the Exceedance				
III.F(c)(1)	Customer Bills	43,300	0	43,300
III.F(c)(2)	Post on Web site	100	0	100
III.F(c)(3)	PSAs and Press Releases	−3,000	−500	−3,500
d. Changes to the Required Timing				
No cost impact				
e. Changes to Consumer Confidence Report				
III.F(e)(1)	CCR Statement	325,900	0	325,900
Total Costs to Systems for PE Requirements (III.F)				
Total		759,500	$21,000	780,500

Note: Totals may not add due to rounding.

3. Costs to States

The direct costs to States as a result of Regulatory Change III.F are estimated to be $50,600. These costs are the annual state labor costs; no materials cost is expected. These costs are given in Table IV.8. Detailed estimates of costs to States are provided in the Economic Analysis, Appendix F (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix F, U.S. EPA, 2006b).

TABLE IV.8.—SUMMARY OF PRELIMINARY COSTS TO STATES DUE TO LCR PUBLIC EDUCATION PROPOSED CHANGES

	Annual labor	Annual materials	Total annual
III.F Costs to States: Review and consultation	$50,600	$0	$50,600
III.F Total State Costs	50,600	0	50,600

I. Direct Costs Associated with Regulatory Change III.G

1. Activities Resulting From Regulatory Cchange

Under this proposed change, utilities that have 90th percentile LCR samples that exceed the Lead Action Level will need to identify all lead service lines (LSL) that had previously been determined to be replaced via sampling. If a LSL was previously ''tested out'' or determined to be replaced by sampling, the sample previously collected from the LSL had a lead level less than the Lead Action Level. These utilities would be affected by Regulatory Change III.G if they exceed the action level again and renew a LSL replacement program. These utilities must put these ''tested out'' LSLs back into their inventory of lead service lines that could be considered for replacement. To estimate the impact of this change, we assume these formerly ''tested out'' LSLs will be retested, and that some of them will exceed the Lead Action Level. The primary activities as a result of this regulatory change include collecting and analyzing samples from these LSLs. Replacement of lines that were previously tested out may also occur as a result of this change.

2. Costs to Utilities

The direct costs to utilities as a result of Regulatory Change III.G are estimated to be $97,000 annually, which includes $87,000 in labor costs and $10,000 in materials costs. Detailed estimates of costs to utilities are provided in the Economic Analysis, Appendix F (Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule, Appendix F, U.S. EPA, 2006b). Estimating the costs to utilities requires an estimate of the number of systems who have been involved in a lead service line replacement program, the number of systems likely to discontinue such a program due to low tested lead levels, and the fraction of those systems likely to subsequently exceed the action level and restart their lead service line replacement program.

In the responses to the 50 state survey on lead implementation (State Implementation of the Lead and Copper Rule U.S. EPA, 2004), 11 States responded that at least one system in their state has been involved in a lead service line replacement program. Six States provided sufficient information to derive a number of systems within that State required to perform lead service line replacement—a total of 28 systems. Based on an average of five systems per State for the six States that provided data, we assume that the remaining five States have five systems, plus one system for DC (which did not respond to the survey) for a total of 54 systems that have been required to perform lead service line replacement.

Because there is not sufficient information to determine how many of 54 systems suspended their lead replacement programs, and later restarted the programs due to an exceedance, we assumed the worst case scenario that all of these systems suspended their lead replacement programs and that the rate of subsequent exceedance was the same as for the universe of systems subject to the LCR, as shown in Table IV.2. Thus, we assume that 1.4 percent of the 54 systems or 1 system will exceed the Action Level and be triggered back into lead service line replacement each year.

EPA does not have information on the number of systems using the test out provisions rather than physically replacing lines, so this approach is conservative because it assumes that all systems in a lead service line replacement program are using the test out provisions. Systems removing lead service lines are not impacted by this change. While the rate at which systems are triggered back into lead service line replacement might be higher than the initial rate, it is offset by the conservative assumptions regarding systems using the test out provisions and the universe of systems that would stop their lead service line replacement program and later resume it because of this change.

Replacement of lines that were previously tested out may also occur as a result of this change. EPA cannot quantify the costs associated with this change for a number of reasons. As noted above, EPA does not have information on the number of systems and the number of lines that have been previously tested out and could be impacted by this change. This difficulty is further compounded by the fact that some lines may have been replaced as part of the ongoing utility replacement programs. In the 1991 final regulatory impact analysis, EPA cited an AWWA survey that produced an estimate of 1 percent of lead service lines being replaced per year as part of ongoing utility replacement programs. After promulgation of the rule, many systems modified their ongoing utility replacement programs to replace lead lines at a higher rate.

Where lines would have to be replaced, the unit cost of replacement is measured in $ per foot of line being replaced. The 1991 final regulatory impact analysis provided a range of $26 to $51 per foot, depending upon system size, as the unit cost for lead service line replacement. Using the Engineering News Record Construction Cost Index, updated estimates would range from $41 per foot for small systems to $80 per foot for large systems. The length of the lead service line owned by systems will also vary, which will affect costs.

The derivation of the number of lead service lines per system and the number of lines to be retested are based on several assumptions. Since EPA does not know the number of years that the system was on the lead service line replacement program before meeting the AL, a conservative assumption was made that all lines were either tested or physically replaced. EPA estimated that the one system impacted by this change is a large system with 21,467 lead service lines. The percent of lead service lines tested out rather than replaced is estimated at 76 percent based on one year of data from DC WASA. It is likely that the estimates of the proportion of lines that are tested out rather than replaced is high because the 76 percent test out was during an initial year of replacement when a system is more likely to be able to test out lines rather than replace them. The time required to physically replace lines also leads to a higher percentage of test outs in the first year at DC WASA. We do not know the remaining years in the lead service line

replacement program, therefore, we assumed that 76 percent of lead service lines will need to be retested over a 15 year period. The resulting number of lead service lines that are assumed to be retested each year is 1,088.

3. Costs to States

No direct costs are expected for State/Primacy agencies as a result of Regulatory Change III.G. The State/Primacy Agencies will review utility Lead Service Line replacement program annual reports but these costs were captured previously in the Final Regulatory Impact Analysis of National Primary Drinking Water Regulations for Lead and Copper, April 1991 (Final Regulatory Impact Analysis of National Primary Drinking Water Regulations for Lead and Copper, U.S. EPA, 1991b).

J. Summary of National Average Annual Direct Costs

The estimates of annual direct costs for the proposed regulatory changes are presented in Table IV.9.

TABLE IV.9.—SUMMARY OF ANNUAL DIRECT COSTS TO SYSTEMS AND STATES FROM ALL PROPOSED REGULATORY CHANGES [1]

Regulatory change	Annual direct costs to systems				Annual direct costs to states	Total annual direct costs
	Reporting	Monitoring	Consumer notice	Total		
III.A						
III.B						
III.C	$56,000	$2,371,000		$2,428,000	$77,000	$2,505,000
III.D Low	474,000			474,000	153,000	627,000
III.D High	733,000			733,000	328,000	1,061,000
III.E			$1,027,000	1,027,000		1,027,000
III.F			780,000	780,000	51,000	831,000
III.G		97,000		97,000		97,000
Total Low	530,000			4,805,000	281,000	5,086,000
		2,468,000	1,807,000			
Total High	789,000			5,064,000	456,000	5,520,000

Notes: 1. Totals may not add due to rounding.

K. Total Upfront Costs to Review and Implement Regulatory Changes

1. Activities Resulting From Regulatory Change

Systems and State/Primacy Agencies will incur one-time upfront costs associated with reviewing and implementing the overall LCR regulatory changes. For systems, activities include reviewing the rule changes and training staff. For States/Primacy Agencies, activities include regulation adoption, program development, and miscellaneous training.

2. Total Costs to Utilities

Direct costs to utilities are estimated to be $8.1 million as summarized in Table IV.8. Detailed estimates of costs to utilities are provided in the Economic Analysis Appendix G (Economic and Supporting Analysis Short-Term Regulatory Changes to the Lead and Copper Rule, Appendix G, U.S. EPA, 2006b). Direct costs to utilities are based solely on labor; no materials costs are expected for these one-time upfront costs.

3. Total Costs to States

Direct costs to the States are estimated to be $0.7 million as summarized in Table IV.10 and detailed in Appendix G of the Economic Analysis (Economic and Supporting Analysis Short-Term Regulatory Changes to the Lead and Copper Rule, U.S. EPA, 2005b, Appendix A). Similar to one-time costs for utilities, these direct costs are based solely on upfront labor costs. Fifty-seven state primacy agencies will review and implement these LCR revisions.

TABLE IV.10.—SUMMARY OF ONE-TIME DIRECT COSTS ASSOCIATED WITH RULE REVIEW AND IMPLEMENTATION

	One time labor costs
Costs to Systems:	
Review & Communication	$8,076,000
Total System Costs	8,076,000
Costs to State/Primacy Agencies:	
Regulation Adoption	730,000
Total State Costs	730,000
Total Rule Implementation Costs	8,806,000

L. Indirect Costs

Previous sections focused on the direct costs of the proposed rulemaking, costs resulting from activities specified by the rule change, such as costs for additional monitoring or distribution of consumer notices. A second type of cost, an indirect cost, may also result when systems and States use the information generated by the rule-required activities to modify or enhance practices to reduce lead levels. Indirect costs may also result if systems or States decide to undertake additional

information-gathering activities not required by the rule.

The proposed revisions will require some systems to generate new information which, in some cases, may be provided to States and customers. The information that is generated may suggest lead and copper risks that would not otherwise have been discovered (or such risks might be discovered sooner than otherwise). Upon obtaining this information, a system itself, the State, or some of the system's customers may take actions to address these risks, incurring the costs of those actions. For example, a system may redesign a planned treatment change following State review of the planned change. Or a system may replace a lead service line that was previously ''tested out.'' System customers, upon receiving notification of the lead content of their tap samples, may take some action, and in the process, incur a cost.

It is both difficult to project what the content will be of the information generated pursuant to the regulation, and difficult to predict how systems and individuals might act in response to the new information generated as a result of these regulatory changes. Because of the uncertainty in tracing the linkages from the regulation to new information to exposure prevention measures, EPA is unable to quantify the indirect costs that might ensue from these regulatory changes.

It is also possible that some additional information-gathering activities may result from the rule. For example, a system may decide to undertake a new study of the corrosion implications of a rule change. Or a state may decide to review sample system customer letters of notification to owner/occupants about the lead levels found in their collected tap samples. These activities would also result in indirect costs associated with the rule.

M. Benefits

The intent of this proposed rulemaking is to improve implementation of the lead and copper regulations by clarifying monitoring requirements, improving customer awareness, and modifying the lead service line test out procedure. The proposed revisions do not affect the action levels, corrosion control requirements, line replacement requirements, or other provisions in the existing rule that directly determine the degree to which the rule reduces risks from lead and copper.

However, the increase in administrative activities that will result from the revisions will result in the generation of new information (e.g., more monitoring data, some of which may show exceedances), and may prompt some systems or individuals to respond to this new information by taking measures to abate lead and copper exposures and thus reduce the associated risk. Also, the requirement that treatment changes be approved by the primacy agency prior to implementation will provide an additional opportunity to identify possible adverse impacts due to treatment changes, which may lower the risk to consumers. Because the precise impact of these proposed revisions on the behavior of individuals and systems is not known, EPA has not quantified the changes in health benefits associated with these proposed revisions. EPA does expect that overall benefits from the LCR will increase, as a result of the indirect effect of the revisions on the actions of individual consumers and systems.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (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, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number XXXX.XX.

1. Need for the Information Collection

EPA requires current information on lead and copper contamination to be provided to consumers and States. Recent highly publicized incidences of elevated drinking water lead levels prompted EPA to review and evaluate the implementation and effectiveness of the LCR on a national basis. As a result of this multi-part review, EPA identified seven targeted rule changes that clarify the intent of the LCR and enhance protection of public health through additional information gathering and public education. Consumers and States will use the information collected as a result of the short-term revisions to the LCR to determine the appropriate action they should undertake. The rule revisions described in Section III of this proposal are intended to improve the implementation of the LCR, and do not alter the original maximum contaminant level goals or the fundamental approach to controlling lead and copper in drinking water.

Section 1401(1)(D) of the SDWA requires that regulations contain ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system * * *.'' Furthermore, Section 1445(a)(1) of the SDWA requires that every person who is a supplier of water ''shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations * * *, in determining whether such person has acted or is acting in compliance. * * *'' In addition, Section 1413(a)(3) of the SDWA requires States to ''keep such records and make such reports * * * as the Administrator may require by regulation.''

Section 1412(b) of the SDWA, as amended in 1996, requires the Agency to publish maximum contaminant level goals and promulgate NPDWRs for

contaminants that may have an adverse effect on the health of persons, are known to or anticipated to occur in PWSs, and, in the opinion of the Administrator, present an opportunity for health risk reduction. The NPDWRs specify maximum contaminant levels or treatment techniques for drinking water contaminants (42 U.S.C. 300g–1). Section 1412(b)(9) requires that EPA no less than every 6 years review, and if appropriate, revise existing drinking water standards. Promulgation of the LCR implements these statutory requirements.

2. Burden Estimate

The universe of respondents for this ICR is comprised of the 52,838 CWSs and 19,375 NTNCWSs, for a total of 72,213 systems, and 57 State primacy agencies. Table V.1 presents a summary of total burden and costs for the ICR period of 2006–2008.

The annual system burden is estimated at 107,924 hours in 2006, 107,924 hours in 2007, and 107,924 hours in 2008. The annual system costs are projected at $2.7 million in 2006, $2.7 million in 2007, and $2.7 million in 2008.

The annual State burden is estimated at 5,928 hours in 2006, 5,928 hours in 2007, and 5,928 hours in 2008. The annual State costs are projected at $243,226 in 2006, $243,226 in 2007, and $243,226 in 2008. These annual costs reflect the costs to systems and States for the first three years after rule promulgation and consist of the one-time direct costs for rule review and implementation. Upon the effective date of the rule, three years after rule promulgation, EPA estimates annual costs to systems for all proposed regulatory revisions ranging from $4.8 to $5.1 million and annual costs to States for all proposed regulatory revisions ranging from $281,000 to $456,000. A detailed discussion of these costs is presented in Section IV of this notice.

3. Bottom Line Burden Hours and Costs

The total burden and costs for the three year compliance period of 2006 to 2008 is summarized in Table V.1. The total burden and costs for each regulatory change is explained in the ICR document for this proposed action.

TABLE V.1.—SUMMARY OF THE BURDEN AND COSTS FROM 2006–2008 FOR THE PROPOSED REGULATORY CHANGES

Respondent	Number of respondents	Burden (hours) 2006–2008	Cost (in $millions) 2006–2008
PWSs	72,213	323,772	$8.1
State	57	17,784	0.73
Total	72,270	341,556	8.8

The estimates of the annual burden and costs from 2006 to 2008 are summarized in Table V.2.

TABLE V.2.— A SUMMARY OF THE ANNUAL BURDEN AND COSTS FROM 2006–2008 FOR THE PROPOSED REGULATORY CHANGES

Respondent	2006		2007		2008	
	Burden (hours)	Cost (in $millions)	Burden (hours)	Cost (in $millions)	Burden (hours)	Cost (in $millions)
PWSs	107,924	2.7	107,924	2.7	107,924	2.7
State	5,928	0.24	5,928	0.24	5,928	0.24
Total	113,852	2.94	113,852	2.94	113,852	2.94

Burden and costs are the same in all three years as it is assumed that the one-time costs to prepare for rule implementation will be spread over the three year period prior to compliance with the regulatory changes.

4. Burden Statement

For the ICR period of 2006 through 2008 associated with the short-term revisions to the LCR, the average burden for systems to implement the proposed requirements of the short-term LCR revisions is estimated to be 1.49 hours per system per year. The average annual cost to systems is expected to be $37.28 per system per year. System burden includes time to read and understand the rule requirements and communicate those requirements to system personnel and management. The average burden for State agencies is estimated to be 104 hours per State per year. This burden includes the time to inform systems of the requirements, and perform primacy related activities. The estimated annual State cost is estimated to be $4,267 per State per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. To comment on the Agency's need for this information, the accuracy of the

provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number 2005–0034. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this proposal for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 18, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by August 17, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of this proposal on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition is applied to this regulation as well.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are small public water systems serving 10,000 or fewer people on an annual basis. We have determined that 68,286 small systems will experience an impact from .004 percent to .13 percent of their revenues (see section V.C.10). Table V.4 provides a summary of these small systems, by size category and system type.

TABLE V.4.—THE NUMBER OF SMALL SYSTEMS AFFECTED BY THE PROPOSED CHANGES

Size	CWS	NTNCWS	Total small
<100	13,766	9,548	23,314
101–500	16,240	6,997	23,237
501–1,000	5,914	1,925	7,839
1,001–3,300	8,298	795	9,093
3,301–10,000	4,707	96	4,803
Total	48,925	19,361	68,286

However, not all of these small entities will be affected and incur direct costs for all of the proposed rule changes. In many cases, only a relatively small subset of these systems will have to change practices to comply with the rule changes. Table V.5 provides an estimate of the number of small systems that will incur direct costs for each of the proposed rule changes.

TABLE V.5.—THE NUMBER OF SMALL SYSTEMS AFFECTED BY EACH REGULATORY CHANGE

Regulatory change	Small systems impacted per year
Regulatory Change # III.A	Not Quantified.
Regulatory Change # III.B	None—Clarifications of definitions with no direct cost impact.
Regulatory Change # III.C	854.
Regulatory Change # III.D	1,009.
Regulatory Change # III.E	60,735.
Regulatory Change # III.F	49,337.
Regulatory Change # III.G	1.

1. Activities and Costs Associated With Rule Changes for Small Systems

EPA has estimated the burden and costs associated with the proposed rule changes as described in the Economic Analysis support document. The basis for many of these input values and assumptions are described in detail in the Economic Analysis, Section 4. The following summarizes the costs estimated for small systems.

2. One-Time Activities

All small systems subject to the Lead and Copper Rule will be expected to incur some costs to read the proposed rule changes and communicate requirements as necessary. The level of effort associated with these activities could range from 4–8 hours for all small systems. The average cost per system for these activities is estimated at $105, for a total cost of $7,193,000 for all 68,286 small systems. This assumes an hourly fully loaded labor cost for small system employees ranging from $22.70 to $26.83 (see Appendix B of the Economic Analysis for derivation).

3. Activities for Regulatory Change III.C

Under Regulatory Change III.C, all systems that exceed the Lead Action Level are triggered into regularly scheduled lead tap monitoring. Additional costs are associated with taking lead samples more frequently and reporting the results to States. EPA estimates that 854 small systems exceed the Action Level each year. Changing from reduced tap monitoring to a regular tap monitoring schedule would result in an average cost increase of $2,092 per year per system. Total costs for all small systems are estimated at $1,786,000 per year.

4. Activities for Regulatory Change III.D

Small systems that are changing treatment or adding a source would incur additional costs under Regulatory Change III.D to prepare data in support of proposed treatment changes or source addition, submit the data to the State for review, and coordinate with the State during the review. These activities are estimated to take an additional 7.5 hours per system for each treatment change or source addition. The cost for each small system that is changing treatment or adding a source is estimated at $201. The total cost for small systems is estimated at $203,000 per year.

5. Activities for Regulatory Change III.E

Most small systems are expected to incur additional costs under Regulatory Change III.E when they are required to notify consumers of tap monitoring results. The activities associated with notifying customers vary based on the type and size of the system. The average cost for small systems to notify customers is estimated at approximately $14 annually. This estimate assumes one labor hour to prepare a customer notification letter per system and $0.43 in material costs per sample for CWSs. EPA assumed one labor hour for NTNCWSs, with negligible material costs. It is important to note that the majority of small systems are assumed to meet the Lead Action Level and are assumed to be on triennial monitoring. Therefore, this requirement will only affect them once every three years. The total cost to small systems is estimated at $878,000.

6. Activities for Regulatory Change III.F

Different provisions of Regulatory Change III.F apply to different subsets of systems. Most small Community Water Systems will incur costs to include a statement on lead on the CCR, at an average cost of $6 per system, based on the assumption of 0.25 hours to add an informational statement on lead to the CCR. Small Non-Transient Non-Community Water Systems that exceed the Lead Action Level will incur costs to modify their public notification language, at an average cost per system of $83. Small Community Water Systems that exceed the Lead Action Level will incur costs from a variety of public education activities, at an average cost per system of $348. The total cost for small systems is estimated at $517,000.

7. Activities for Regulatory Change III.G

Regulatory Change III.G applies to systems that have ''tested out'' lead service lines as part of a lead service line replacement program and then re-exceed the Action Level. For the purposes of subsequent lead service line replacement efforts, the previously ''tested out'' lines would go back into the inventory for possible re-testing and/or replacement. Only a handful of systems are expected to be in this situation, estimated at one system per year. There is no evidence that small systems would be triggered into this regulatory change cost any more frequently than other systems. If this system were a small system, a lower number of lead service lines would be replaced or tested out than was assumed in the Economic Analysis. The average number of service connections per system for systems serving fewer than 10,000 is 289. For the purposes of the Regulatory Flexibility Analysis we assume that all 289 of these service connections are lead service lines. The resulting cost per system for the retesting is estimated at $1,311 per year for a small system based on the approach described earlier in the Economic Analysis for Regulatory Change III.G. The percent assumed to be tested out rather than replaced is estimated at 76 percent based on one year of data from DC WASA. This means that 76 percent of the 289 service connection lines would need to be retested over a 15 year period.

8. Total Small System Costs

Table V.6 summarizes the estimated annual costs associated with all proposed regulatory changes after those changes have been implemented. An additional $7,193,000 in one-time rule implementation costs will also be incurred during the three year period prior to implementation of the changes.

TABLE V.6.—TOTAL SMALL SYSTEM COSTS

	Annual labor	Annual materials	Total annual
Regulatory Change #III.A	.....	.....	.....
Regulatory Change #III.B	.....	.....	.....
Regulatory Change #III.C	$1,625,000	$162,000	$1,787,000
Regulatory Change #III.D	203,000	.....	203,000
Regulatory Change #III.E	779,000	99,000	878,000
Regulatory Change #III.F	513,000	4,000	517,000
Regulatory Change #III.G	1,178	133	1,311
Total	3,121,000	265,000	3,386,000

9. Average Costs Per Small System

The average compliance cost for all small systems covered by the LCR for the proposed rule change is minimal: $50 per system in annual costs. However, there is a fairly wide range in the costs that a system could face. All systems will incur a $105 one-time cost, but the additional annual costs could be as low as $0 for small systems that already notify customers of tap monitoring results and who do not detect lead in their compliance sampling. Systems that do not already notify customers of results will incur a cost of $14 per year. Systems that detect any level of lead above the method detection limit of 0.001 mg/L in their compliance sample will incur a cost of $6 per year to include a statement in their CCR. The roughly 1.5 percent of systems that are making a treatment change or source addition would incur an additional $201 in the year they make the change.

At the high end, the roughly 1.4 percent of small systems that exceed the Action Level would incur an additional $2,440 per year. Under the assumptions in the Economic Analysis, only .0015 percent of systems (1 per year) could possibly incur both the additional tap monitoring costs and lead service line testing costs after an Action Level exceedance, at a total cost of $1,311 per year. If a system incurred all annual costs, the total would be $3,972 per year.

10. Measuring Significant Impact of Rule Costs

The costs to small systems are first compared against average revenues for small systems from all revenue sources. Small systems can be one of three types of small entities—small businesses, small governments, or small non-profits. In the Economic Analysis for the final Stage 2 Disinfectants and Disinfection Byproducts Rule, EPA calculates the average revenues from all revenue sources for small systems serving fewer than 10,000 for each of the small entity types and then estimates a weighted average revenue from all revenue sources based on the proportion of small systems in each type of entity (U.S. EPA 2005c). The weighted average revenue from all revenue sources for small systems is estimated at $3 million per year.

Using the average cost of the regulatory changes for small systems, the one-time implementation costs represent roughly 0.004 percent of annual revenues from all revenue sources. The $50 average annual costs represent 0.002 percent of average annual revenues from all revenue sources. Roughly 1.4 percent of the systems would incur annual costs of $2,440, which is approximately .082 percent of revenues from all sources. Only 1 system could face the maximum annual costs of $3,972. This maximum cost is approximately 0.13 percent of annual revenues from all sources.

In summary, the costs for the average small system due to the regulatory changes are estimated to be less than 1 percent of revenues (0.002 percent). In addition, fewer than 100 systems (1 system per year) are expected to experience economic impacts of approximately 0.13 percent of the revenue.

Based on this analysis, EPA has concluded that the proposed rule changes will not have a significant impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by considering several alternatives to the proposed regulatory changes that could minimize impact to small systems while still meeting the objectives of the rule.

11. Regulatory Changes III.A

These changes clarify the original intent of the LCR that very small NTNCWSs serving 100 persons or fewer take a minimum of five samples for each sampling period, even if the system has fewer than five sampling locations. EPA is requesting comment on an option suggested by a work group comprised of representatives from EPA's regional offices and several States that would limit the number of samples these systems would have to take to one for each location (*i.e.*, tap). Taking fewer than five samples for each monitoring event would reduce the monitoring burden for small systems. However, as explained in the preamble to the proposed regulatory changes, EPA believes that taking fewer than five samples for a system would likely compromise the statistical objectives of monitoring for lead and copper.

12. Regulatory Change III.C

Regulatory Change III.C requires systems that have exceeded the Lead Action Level to resume tap monitoring for lead on a regular, rather than reduced, schedule. Originally, EPA had considered extending this requirement to both lead and copper monitoring. Based on suggestions from the work group to minimize impacts on small systems, EPA limited the requirement to only Lead Action Level exceedances.

13. Regulatory Change III.E

Regulatory Change III.E requires systems to provide lead monitoring results to consumers. The work group discussed including copper monitoring results in the notification, but deferred that suggestion for future consideration, thereby limiting the increase in burden for small systems. Section H of this proposal also provides some important clarifications of alternatives to corrosion control for small systems.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

EPA has determined that this 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 total upfront costs of this action to States and public water systems are estimated at $8.8 million, with estimated annual costs to States and public water systems ranging from approximately $5.1 to $5.5 million. Systems and State/Primacy agencies will incur one-time upfront costs associated with reviewing and implementing the overall LCR regulatory changes. For systems, activities include reviewing the rule changes and training staff. For States/Primacy agencies, activities include regulation adoption, program development, and miscellaneous training. Systems and States will also incur annual costs consisting of the costs to implement the regulation. Annual costs to systems include the costs of reporting, monitoring, and public education. Annual costs to States consist of the costs of reviewing water system information. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The regulation applies to all owners/operators of public water systems, not uniquely to those owners/operators that are small entities, and, for most systems, requires minimal expenditure of resources. Since these regulatory revisions affect all system sizes and the impact on the average small system will be 0.13 percent of revenues, the regulatory revisions to the LCR are not subject to the requirements of section 203 of UMRA.

Nevertheless, in developing this rule, EPA consulted with State and local officials (including small entity representatives) early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. EPA held five workshops in 2004–2005 to elicit concerns and suggestions from stakeholders on various issues related to lead in drinking water. These workshops covered the topic areas of simultaneous compliance, sampling protocols, public education, lead service line replacement, and lead in plumbing. Expert participants from utilities, academia, state governments, consumer and environmental groups, and other stakeholder groups participated in these workshops to identify issues, propose solutions, and offer suggestions for modifications and improvements to the LCR. These workshops are described in greater detail in the Economic Analysis for this proposed rule.

The Agency has developed fact sheets that describe requirements of the short-term regulatory revisions and clarifications to the LCR. These fact sheets are available by calling the Safe Drinking Water Hotline at 800–426–4791.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule is consistent with, and only makes revisions to, the requirements under the current national primary drinking water regulations for lead and copper. The existing rule imposes requirements on public water systems to ensure that water delivered to users is minimally corrosive, remove lead service lines and provide public education where necessary to ensure public health protection. This proposed rule does not make any significant changes to these requirements but makes revisions and clarifications to the rule's requirements to enhance the efficiency and effectiveness of current requirements.

Nevertheless, EPA did consult with State and local officials early in the process of developing the proposed regulation as described in section V.D, Unfunded Mandates Reform Act. Several States also participated in EPA's workgroup that developed this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on those communities. The provisions of the proposed rule apply to all community and non-transient non-community water systems. tribal governments may be the owners or operators of such systems, however, nothing in this proposal's provisions uniquely affects them. EPA therefore concludes that this proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. This proposed rule does not change the core LCR requirements in place to assure the protection of children from the effects of lead in drinking water, rather the proposed changes will improve the implementation of these provisions. Moreover, EPA believes that this

proposal is consistent with Executive Order 13045 because it will further strengthen protection to children from exposure to lead and copper via drinking water, as this proposal enhances the implementation of the LCR in the areas of monitoring, customer awareness, and lead service line replacement. This proposal also clarifies the intent of some unclear provisions in the LCR. These changes are expected to ensure and enhance more effective protection of public health through the reduction in lead exposure.

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

This 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. The rule provides clarifications and modifications to the existing LCR rule language only.

This proposed rule does not affect the supply of energy as it does not regulate power generation. The public and private utilities that will be affected by this proposed regulation do not, as a rule, generate power. The proposed revisions to the LCR do not regulate any aspect of energy distribution as the utilities that are regulated by the LCR already have electrical service. Finally, these regulatory revisions do not adversely affect the use of energy as EPA does not anticipate that a significant number of drinking water utilities will add treatment technologies that use electrical power to comply with these regulatory revisions. As such, EPA does not anticipate that this rule will adversely affect the use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rule may involve voluntary consensus standards in that it requires additional monitoring for lead and copper in certain situations, and monitoring and sample analysis methodologies are often based on voluntary consensus standards. However, the proposed rule does not change any methodological requirements for monitoring or sample analysis, only, in some cases, the required frequency and number of samples. Also, EPA's approved monitoring and sampling protocols generally include voluntary consensus standards developed by agencies such as the American National Standards Institute (ANSI) and other such bodies wherever EPA deems these methodologies appropriate for compliance monitoring.

VI. References

The public docket is available as described at the beginning of this document. The following references are referred to in this document and are included in the public docket:

U.S. EPA. 1988. Regulatory Impact Analysis of Proposed National Primary Drinking Water Regulations for Lead and Copper (Draft). Prepared by Wade Miller Associates, Inc. (June 1, 1988).

U.S. EPA. 1990. Variability of Household Water Lead Levels In American Cities.

U.S. EPA 1991a. Final Information Collection Request for National Primary Drinking Water Regulations for Lead and Copper. April, 1991.

U.S. EPA 1991b. Final Regulatory Impact Analysis of National Primary Drinking Water Regulations for Lead and Copper. April, 1991.

U.S. EPA. 1991c. Memorandum from Jeff Cohen to the Record on Required Number of Samples (May 6, 1991).

U.S. EPA. 1991d. **Federal Register**. Vol 56, No. 110. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule (Fri. Jun. 7, 1991), 26460–26564. [56 FR 26460].

U.S. EPA. 1996a. Regulatory Impact Analysis Addendum EPA 812–B–96–002, January 1996.

U.S. EPA. 1996b. **Federal Register**. Vol 60, No. 72 Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper (Apr. 12, 1996), 16348–16371. [72 FR 16348].

U.S. EPA. 1998a. **Federal Register**. Vol 63, No. 160 National Primary Drinking Water Regulations: Consumer Confidence Reports (Aug. 19, 1998), 44512–44536. [63 FR 44512].

U.S. EPA. 1999a. Information Collection Request: National Primary Drinking Water Regulations for Lead and Copper. June 1999. EPA ICR Number: 1912.01.

U.S. EPA. 2000a. **Federal Register**. Vol 65, No. 8 National Primary Drinking Water Regulations for Lead and Copper; Final Rule (Wed. Jan. 12, 2000), 1950–2015. [65 FR 1950].

U.S. EPA. 2000b. **Federal Register**. Vol 65 No. 87 National Primary Drinking Water Regulations: Public Notification Rule (Thurs. May 4, 2000), 25982–26049. [65 FR 25982].

U.S. EPA. 2002. Lead and Copper Monitoring and Reporting Guidance for Public Water Systems. February, 2002.

U.S. EPA. 2004a. Expert Panel Workshop Public Education Under the Lead and Copper Rule and Drinking Water Risk Communication Summary. September 14–15, 2004. Hilton Philadelphia Airport, Philadelphia, PA (*http://www.epa.gov/safewater/lcrmr/lead_review.html*).

U.S. EPA. 2004b. Information Collection Request for Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules, OMB Control Number: 2040–0204, EPA Tracking Number: 1896.03. September, 2004.

U.S. EPA. 2004c. Information Collection Request for Disinfection Byproducts, Chemical, and Radionuclides Rules, OMB Control Number: 2040–0204, EPA Tracking Number: 1896.03. Appendix H, page H–43, table entitled ''Tap Monitoring for Lead & Copper-Monitoring, Burden, and Cost Assumptions.'' September, 2004.

U.S. EPA. 2004d. State Implementation of the Lead and Copper Rule. July, 2004.

U.S. EPA. 2004e. Summary Lead Action Level Exceedances for Public Water Systems Subject to the Lead and Copper Rule. September 13, 2004.

U.S. EPA. 2005. **Federal Register**. Vol. 70, No. 177 National Drinking Water Advisory Council's Working Group on Public Education Requirements of the Lead and Copper Rule Meeting Announcement (Wed. Sept. 14, 2005), 54375. [70 FR 54375].

U.S. EPA. 2006a. Lead and Copper Rule State File Review: National Report. March, 2006.

U.S. EPA. 2006b. Economic and Supporting Analysis Short Term Regulatory Changes to the Lead and Copper Rule. May, 2006.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: July 6, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 141 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.80 is amended by removing and reserving paragraph (a)(2) and by revising paragraph (g) to read as follows:

§ 141.80 General Requirements

* * * * *

(g) *Public education requirements.* Any system exceeding the Lead Action Level shall implement the public education requirements. Pursuant to § 141.85, all water systems must provide a consumer notice of lead tap water monitoring results to persons served at the sites that are tested.

* * * * *

3. Section 141.81 is amended as follows by:

a. Removing the first sentence in paragraph (b)(3)(iii) and adding in its place the following two sentences,

b. Revising the last sentence in paragraph (e)(1);

c. Revising the first sentence in paragraph (e)(2);

d. Revising paragraph (e)(2)(i); and

e. Revising paragraph (e)(2)(ii).

§ 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

Any water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the State in writing pursuant to § 141.90(a)(3) of any upcoming change in treatment or addition of a new source. The State must review and approve the addition of a new source or change in water treatment before it is implemented by the water system.

* * * * *

(e) * * *

(1) * * * A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)) within six months after the end of the monitoring period during which it exceeds one of the action levels.

(2) *Step 2:* Within 12 months after the end of the monitoring period during which a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies (§ 141.82(b)). * * *

(i) For medium-size systems, within 18 months after the end of the monitoring period during which such system exceeds the lead or copper action level.

(ii) ''For small systems, within 24 months after the end of the monitoring period during which such system exceeds the lead or copper action level.''

* * * * *

4. Section 141.83(a)(1) is revised to read as follows:

§ 141.83 Source water treatment requirements.

* * * * *

(a) * * * (1) *Step 1:* A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (§ 141.88(b)) and make a treatment recommendation to the State (§ 141.83(b)(1)) no later than 6 months after the end of the monitoring period during which the lead or copper action level was exceeded.

* * * * *

5. Section 141.84 is amended as follows by:

a. Redesignating paragraph (b) as (b)(1);

b. Revising the last sentence in the newly designated (b)(1) and adding two sentences to the end of the paragraph;

c. Adding paragraph (b)(2); and

d. In paragraph (f), revise ''(b)'' to read ''(b)(2)''.

§ 141.84 Lead service line replacement requirements.

* * * * *

(b)(1) * * * The first year of lead service line replacement shall begin on the date after the monitoring period in which the action level was exceeded under paragraph (a) of this section. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the State has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(2) Any water system resuming a lead service line replacement program shall update its inventory of lead service lines to include those sites that were previously determined not to require replacement through the sampling provision under paragraph (c) of this section. The system will then divide the updated number of remaining lead service lines by the number of remaining years in the program to determine the number of lines that must be replaced per year (7 percent replacement is based on a 15-year replacement program, so, for example, systems resuming after conducting two years of replacement would divide the updated inventory by 13).

* * * * *

6. Section 141.85 is revised to read as follows:

§ 141.85 Public education and supplemental monitoring requirements.

A water system that exceeds the Lead Action Level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraph (a) of this section in accordance with the requirements in paragraph (b) of this section. Water systems that exceed the Lead Action Level must sample the tap water of any customer who requests it in accordance with paragraph (c) of this section. All water systems must provide a consumer notice of lead tap water monitoring results to persons served by the water system at sites that are tested, as specified in paragraph (d) of this section.

(a) *Content of written public education materials.*—(1) *Community water systems and Non-transient non-community water systems.* Water systems must include the following elements in printed materials (such as brochures and pamphlets) in the same order as listed below. In addition, paragraphs (a)(1)(i)–(ii) and (a)(1)(vi) must be included exactly as written except for the text in brackets in these paragraphs for which the water system must include system-specific information. Any additional information presented by a water system must be consistent with the information below and be in plain language that can be understood by lay people.

(i) *Opening Statement.* IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. [INSERT NAME OF WATER SYSTEM] found high levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and children 6 years and under. Please read this notice closely to see what you can do to reduce lead in your drinking water.

(ii) *Health effects of lead.* Lead can cause serious health problems if too much enters your body. It can cause damage to the brain and kidneys and can decrease the number of red blood cells (a risk factor for anemia). The greatest risk is to infants, young children, and pregnant women. Small amounts slow down normal mental development in growing children and alter the development of other organs and systems. The effects of lead on the brain are associated with lowered IQ in children. Adults with kidney problems and high blood pressure are more likely to be affected by low levels of lead than the general population. Lead is stored in the bones allowing it to be released even after exposure stops. The presence in

bone increases the concern for exposure at all points of the life cycle.

(iii) *Sources of Lead.* (A) Explain what lead is.

(B) Explain possible sources of lead and how lead enters drinking water. Include information on home/building plumbing and service lines that may contain lead.

(C) Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(iv) *Steps you can take to reduce your exposure to lead in drinking water.* (A) Encourage running the water to flush out the lead.

(B) Explain concerns with using hot water and specifically caution against the use of hot water for baby formula.

(C) Explain that boiling water does not reduce lead levels.

(D) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(v) What happened and What is being done?

(A) Explain why there are high levels of lead in the system's drinking water (if known).

(B) Discuss what the water system is doing to reduce the lead levels in homes/buildings in this area.

(vi) For More Information. Call us at [INSERT YOUR NUMBER], or visit our web site at [INSERT YOUR WEB SITE HERE IF APPLICABLE]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's Web site at *www.epa.gov/lead*, call the National Lead Information Center at 1–800–424–LEAD, or contact your health care provider.

(2) *Community water systems.* In addition to including the elements specified in paragraph (a)(1) of this section, community water systems must:

(A) Tell consumers how to get their water tested.

(B) Discuss lead in plumbing components and the difference between low lead and lead free.

(b) *Delivery of public education materials.* (1) In communities where a significant proportion of the population speaks a language other than English the system must also provide the public education materials in the appropriate language(s).

(2) A community water system that exceeds the Lead Action Level on the basis of tap water samples collected in accordance with § 141.86, and that is not already conducting public education tasks under this section, must, within 60 days after the end of the monitoring period in which the exceedance occurred:

(i) Deliver printed materials meeting the content requirements of paragraph (a) of this section to all bill paying customers.

(ii) Make a good faith effort to contact all customers who are most at risk by delivering materials that meet the content requirements of paragraph (a) of this section to the following organizations along with a cover letter that encourages distribution by the organization to all its potentially affected customers or users.

(A) Local Public Health Agencies—The water system must deliver materials that meet the content requirements of paragraph (a) of this section to the local public health agencies and must directly contact (by phone or in person) the local public health agencies. The local public health agencies may provide a specific contact list of additional community based organizations serving targeted populations.

(B) Public and private schools or school boards.

(C) Licensed childcare centers.

(D) Public and private pre-schools.

(E) Women Infants and Children (WIC) and Head Start programs.

(F) Public and private hospitals and medical clinics.

(G) Pediatricians.

(H) Obstetricians-Gynecologists and Midwives.

(I) Family planning clinics.

(J) Local welfare agencies.

(iii) Provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the following statement exactly as written with the addition of the system's name and Web site: [INSERT NAME OF WATER SYSTEM] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [INSERT NAME OF WATER SYSTEM] [or visit (INSERT YOUR WEB SITE HERE)]. The message or delivery mechanism can be modified in consultation with the State.

(iv) Post material meeting the content requirements of paragraph (a) on the water system's Web site if the system serves a population greater than 100,000.

(v) Submit press release to newspaper, television and radio stations.

(vi) In addition to paragraphs (b)(2)(i)–(v) of this section, systems must implement at least 3 activities from one or more categories listed below. The content of these activities must be determined in consultation with the State.

(A) Public Service Announcements.

(B) Paid advertisements.

(C) Display Information in Public Areas.

(D) Internet such as emails to customers.

(E) Public Meetings.

(F) Delivery to every household.

(G) Individual contact with customers (targeted contact).

(H) Provide materials directly to all multi-family homes and institutions.

(I) Other methods approved by the State.

(vii) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate monitoring period, the last day of that period.

(3) As long as a system exceeds the action level, it must repeat the activities described in paragraph (b)(2) of this section as described in (b)(3)(i)–(iv) of this section.

(i) A community water system shall repeat the tasks contained in paragraphs (b)(2)(i)(ii) and (vi) of this section every 12 months.

(ii) A community water system shall repeat tasks contained in paragraph (b)(2)(iii) of this section with each billing cycle.

(iii) A community water system serving a population greater than 100,000 shall post material on a publicly accessible internet site pursuant to (b)(2)(iv) of this section.

(iv) The community water system shall repeat the task in (b)(2)(v) of this section twice every 12 months on a schedule agreed upon with the state. The State can allow activities in (b)(2)(iii) and (b)(2)(vi) of this section to extend beyond the 60-day requirement if needed for implementation purposes; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

(4) Within 60 days after the end of the monitoring period in which the exceedance occurred (unless it already is repeating public education tasks pursuant to paragraph (b)(5) of this section), a non-transient non-community water system shall deliver the public education materials specified by paragraph (a) of this section as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system. The State may allow the system to utilize electronic transmission in lieu

of or combined with printed materials as long as it achieves at least the same coverage.

(iii) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate monitoring period, the last day of that period.

(5) A non-transient non-community water system shall repeat the tasks contained in paragraph (b)(4) of this section at least once during each calendar year in which the system exceeds the Lead Action Level.

(6) A water system may discontinue delivery of public education materials if the system has met the Lead Action Level during the most recent six-month monitoring period conducted pursuant to § 141.86. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the Lead Action Level during any monitoring period.

(7) A community water system may apply to the State, in writing, (unless the State has waived the requirement for prior State approval) to use only the text specified in paragraph (a)(1) of this section in lieu of the text in paragraphs (a)(1) and (a)(2) of this section and to perform the tasks listed in paragraphs (b)(4) and (b)(5) of this section in lieu of the tasks in paragraphs (b)(2) and (b)(3) of this section if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(8) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(i) With respect to the requirements of paragraph (b)(2)(vi) of this section, a system serving 3300 or fewer must implement at least one of the activities listed in that paragraph.

(ii) With respect to the requirements of paragraph (b)(2)(ii) of this section, a system serving 3300 or fewer people may limit the distribution of the public education materials required under that paragraph to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(iii) With respect to the requirements of paragraph (b)(2)(v) of this section, the State may waive this requirement for systems serving 3300 or fewer persons as long as system distributes notices to every household served by the system.

(c) *Supplemental monitoring and notification of results.* A water system that fails to meet the Lead Action Level on the basis of tap samples collected in accordance with § 141.86 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(d) *Notification of results*—(1) *Reporting requirement.* All water systems must provide a consumer notice of lead tap water monitoring results carried out to meet requirements under § 141.86 to all persons served by the water system at the sampling sites in § 141.86(c).

(2) *Timing of notification.* A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system learns of the tap monitoring results.

(3) *Content.* The consumer notice must include the results of lead tap water monitoring for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from § 141.153(c)(1).

(4) *Delivery.* The consumer notice must be provided to all persons served at the site by mail or other methods approved by the State. The system must provide the notice to all customers, including consumers who do not get water bills.

7. Section 141.86 is amended as follows:

a. In the introductory paragraph of (c), adding a sentence after the third sentence;

b. In paragraph (d)(4)(i) add as the last sentence;

c. Revising paragraph (d)(4)(ii);

d. Revising paragraph (d)(4)(iii);

e. Revising paragraph (d)(4)(iv)(A);

f. Revising paragraph (d)(4)(vi)(B);

g. In paragraph (d)(4)(vi)(B)(*1*) adding as the last sentence;

h. Removing the first sentence in paragraph (d)(4)(vii), and adding in its place the following two sentences;

i. In paragraph (g)(4)(i) adding as the last sentence; and

j. Revising paragraph (g)(4)(iii).

§ 141.86 Monitoring requirements for lead and copper in tap water.

* * * * *

(c) * * * A non-transient non-community public water system that serves 100 people or less and that does not have enough drinking water taps meeting the sample site criteria of § 141.86(a) to reach the required number of sample sites listed in § 141.86(c) must collect at least one sample from each tap and then must collect additional samples from those taps on different days during the monitoring period to meet the required number of sites.

* * *

* * * * *

(d) * * *

(4) * * *

(i) * * * This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(ii) Any water system that meets the Lead Action Level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with paragraph (c) of this section if it receives written approval from the State. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with § 141.90, and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that meets the Lead Action Level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if it receives

written approval from the State. Samples collected once every three years shall be collected no later than every third calendar year. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with § 141.90, and shall notify the system in writing when it determines the system is eligible to reduce the frequency of monitoring to once every three years. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) * * *

(A) The State, at its discretion, may approve different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. This sampling shall begin no later than the six-month period beginning January 1 of the calendar year following the reduced monitoring exceedance. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a non-transient non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead tare most likely to occur is not known, the State shall designate a period that represents a time of normal operation for the system. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period for systems resuming annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems resuming triennial monitoring.

(B) Any water system subject to the reduced monitoring frequency that fails to meet the Lead Action Level during any four-month monitoring period or that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under § 141.82(f) for more than nine days in any six-month period specified in § 141.87(d) shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring for water quality parameters within the distribution system in accordance with § 141.87(d). This standard tap water sampling shall begin no later than the six-month period beginning January 1 of the calendar year following the water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(*1*) * * * This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

* * * * *

(vii) Any water system subject to reduced monitoring frequency under paragraph (d)(4) of this section shall notify the State in writing in accordance with § 141.90(a)(3) of any upcoming change in treatment or addition of a new source. The State must review and approve the addition of a new source or change in water treatment before it is implemented by the water system.

* * *

* * * * *

(g) * * *

(4) * * *

(i) * * * Samples collected every nine years shall be collected no later than every ninth calendar year.

* * * * *

(iii) Any water system with a full or partial waiver shall notify the State in writing in accordance with § 141.90(a)(3) of any upcoming change in treatment or addition of a new source. The State must review and approve the addition of a new source or change in water treatment before it is implemented by the water system. The State has the authority to require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials, require additional rounds(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the system. * * *

8. Section 141.87 is amended as follows by:

a. Revising the first sentence in paragraph (d);

b. Revising paragraph (e)(2)(i); and

c. Adding as the last sentence of (e)(2)(ii).

§ 141.87 Monitoring requirements for water quality parameters.

* * * * *

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section and determine compliance with the requirements of § 141.82(g) every six months with the first six-month period to begin on either January 1 or July 1, whichever comes first, after the State specifies the optimal values under § 141.82(f). * * *

(e) * * *

(2) * * *

(i) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f), during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(ii) * * * Monitoring conducted every three years shall be done no later than every third calendar year.

* * * * *

9. Section 141.88 is amended as follows by:

a. Revising paragraph (b);

b. Adding a sentence to the end of paragraph (d)(1)(i);

c. Revising paragraph (d)(1)(ii);

d. Revising paragraph (e)(1) introductory text; and

e. Revising paragraph (e)(2) introductory text.

§ 141.88 Monitoring requirements for lead and copper in source water.

* * * * *

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution

system no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the State has established an alternate monitoring period, the last day of that period.

* * * * *

(d) * * *

(1) * * *

(i) * * * Triennial samples shall be collected every third calendar year.

(ii) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each calendar year, the first annual monitoring period to begin during the year in which the applicable State determination is made under paragraph (d)(1) of this section.

* * * * *

(e) * * *

(1) A water system using only ground water may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle (as that term is defined in § 141.2) provided that the samples are collected no later than every ninth calendar year and if the system meets one of the following criteria:

* * * * *

(2) A water system using surface water (or a combination of surface water and ground water) may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each nine-year compliance cycle (as that term is defined in § 141.2) provided that the samples are collected no later than every ninth calendar year and if the system meets one of the following criteria:

* * * * *

10. Section 141.90 is amended as follows by:

a. Adding a sentence to the end of paragraph (a)(1);

b. Revising paragraph (a)(3);

c. Revising paragraph (e)(1);

d. Revising paragraph (e)(2) introductory text;

e. Revising the last sentence of paragraph (e)(2)(ii);

f. Revising paragraph (f)(1) introductory text; and

g. Revising paragraph (f)(1)(i).

§ 141.90 Reporting requirements.

* * * * *

(a) * * * (1) For monitoring periods with a duration less than six months, the end of the monitoring period is the last date samples can be collected during that period as specified in §§ 141.86 and 141.87.

* * * * *

(3) At a time specified by the State, or if no specific time is designated by the State, then as early as possible prior to the addition of a new source or any change in water treatment, a water system deemed to have optimized corrosion control under § 141.81(b)(3), a water system subject to reduced monitoring pursuant to § 141.86(d)(4), or a water system subject to a monitoring waiver pursuant to § 141.86(g), shall send written documentation to the State describing the change. The State must review and approve the addition of a new source or change in water treatment before it is implemented by the water system.

* * * * *

(e) * * *

(1) No later than 12 months after the end of a monitoring period in which a system exceeds the Lead Action Level in sampling referred to in § 141.84(a), the system must submit written documentation to the State of the material evaluation conducted as required in § 141.86(a), identify the initial number of lead service lines in its distribution system at the time the system exceeds the Lead Action Level, and provide the system's schedule for annually replacing at least 7 percent of the initial number of lead service lines in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a system exceeds the Lead Action Level in sampling referred to in § 141.84(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) * * *

(ii) * * * In such cases, the total number of lines replaced and/or which meet the criteria in § 141.84(c) shall equal at least 7 percent of the initial number of lead lines identified under paragraph (1) of this section (or the percentage specified by the State under § 141.84(e)).

* * * * *

(f) * * * (1) Any water system that is subject to the public education requirements in § 141.85 shall, within ten days after the end of each period in which the system is required to perform public education in accordance with § 141.85(b), send written documentation to the State that contains:

(i) A demonstration that the system has delivered the public education materials that meet the content requirements in § 141.85 (a) and the delivery requirements in § 141.85(b); and

* * * * *

11. Section 141.154 is amended by revising paragraph (d) introductory text, paragraph (d)(1) and (d)(2) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(d) Systems that detect any level of lead above the method detection limit of 0.001 mg/L in their drinking water pursuant to monitoring under § 141.86 must do one of the following:

(1) Include a short informational statement about the special effects of lead on children if the system's 90th percentile level is at or below the Lead Action Level. The statement must include the following information: ''While our system did not exceed the Lead Action Level as shown in the table, it is possible that there may be high lead levels in your home as a result of materials in your home plumbing. Lead can cause serious health problems, especially for pregnant women and children 6 and under. If you are concerned about high lead levels in your home's water, run your water for 30 seconds to 2 minutes before using tap water and have your water tested. Additional information is available from the National Lead Information Center at 1–800–424–LEAD.'' The system may write its own educational statement, but only in consultation with the Primacy Agency.

(2) Include a short informational statement about the special effects of lead on children if the 90th percentile sample is above the Lead Action Level. The statement must include the following information: ''Our system exceeded the Lead Action Level. It is possible that there may be high lead levels in your home as a result of materials in your home plumbing. Lead can cause serious health problems, especially for pregnant women and children 6 and under. If you are concerned about high lead levels in your home's water, run your water for 30 seconds to 2 minutes before using tap water and have your water tested. Additional information is available from the National Lead Information Center at 1–800–424–LEAD.'' The system may write its own educational statement, but only in consultation with the Primacy Agency.

* * * * *

[FR Doc. 06–6250 Filed 7–17–06; 8:45 am]

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Tuesday,
July 18, 2006

Part IV

Securities and Exchange Commission

17 CFR Part 240

Concept Release Concerning Management's Reports on Internal Control Over Financial Reporting; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–54122; File No. S7–11–06]

RIN 3235–AJ58

Concept Release Concerning Management's Reports on Internal Control Over Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking; Concept Release; request for comment.

SUMMARY: The Commission is publishing this Concept Release to understand better the extent and nature of public interest in the development of additional guidance for management regarding its evaluation and assessment of internal control over financial reporting so that any guidance the Commission develops addresses the needs and concerns of public companies, consistent with the protection of investors.

DATES: Comments should be submitted on or before September 18, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–11–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper submissions 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 S7–11–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown, Division of Corporation Finance or Michael Gaynor, Office of Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Section 404(a) of the Sarbanes-Oxley Act of 2002 [1] directed the Commission to prescribe rules that require each annual report that a company, other than a registered investment company, files pursuant to section 13(a) or 15(d) [2] of the Securities Exchange Act of 1934 [3] to contain an internal control report: (1) Stating management's responsibilities for establishing and maintaining adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal controls and procedures for financial reporting. On June 5, 2003, the Commission adopted rules published at 68 FR 36636, June 18, 2003, implementing section 404 with regard to management's obligations to report on internal control over financial reporting.

Domestic reporting companies that meet the definition of ''accelerated filer'' under the Commission's rules were required to comply with the internal control reporting provisions for the first time in connection with their fiscal years ending on or after November 15, 2004. Foreign private issuers that meet the definition of accelerated filer must comply with those provisions for their first fiscal year ending on or after July 15, 2006. On September 22, 2005, in a document published at 70 FR 56825, September 29, 2005, the Commission postponed the compliance date for domestic and foreign non-accelerated filers until their first fiscal years ending on or after July 15, 2007.

On May 17, 2006, the Commission announced through a press release its intent to issue an additional postponement for compliance for non-accelerated filers. As announced in that press release, the Commission expects to propose an additional extension of the dates for complying with our internal control over financial reporting requirements for companies that are non-accelerated filers, including foreign private issuers that are non-accelerated filers.

Section 404(b) of Sarbanes-Oxley, as well as the Commission's rules adopted to implement the requirements of that section of the Act, require every registered public accounting firm that prepares or issues a financial statement audit report for a company also to attest to and report on management's assessment of internal control over financial reporting, in accordance with standards to be established by the Public Company Accounting Oversight Board (PCAOB). On June 17, 2004, the Commission issued an order approving PCAOB Auditing Standard No. 2, ''An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements'' (AS No. 2), published at 69 FR 35083, June 23, 2004, which established the requirements that apply when an independent auditor is engaged to provide an attestation and report on management's assessment of the effectiveness of a company's internal control over financial reporting.

In the release adopting the Commission's rules implementing section 404, we expressed our belief that the methods of conducting assessments of internal control over financial reporting will, and should, vary from company to company.[4] We continue to believe that it is impractical to prescribe a single methodology that meets the needs of every company. However, we have received feedback that the limited nature and extent of detailed management guidance available has resulted in management's implementation and assessment efforts being driven largely by AS No. 2. Therefore, we are planning to issue additional guidance to assist management in its performance of its assessment of internal control over financial reporting. On May 17, 2006, we announced, among other things, our intent to issue this Concept Release seeking comment on a variety of issues that might be the subject of Commission guidance for management. As we noted in that announcement, in writing any guidance we will be sensitive to the fact

[1] 75 U.S.C. 7262.

[2] 15 U.S.C. 78m(a) or 78o(d).

[3] 15 U.S.C. 78a *et seq*.

[4] *See* SEC *Final Rule: Management's Reports on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,* Release No. 34–47986 (June 5, 2003) [68 FR 36636, June 18, 2003] (hereinafter ''Adopting Release'') at Section II.B.3.d.

that many companies already have invested substantial resources to establish and document programs and procedures to perform their assessments over the last few years.

II. Introduction

Based on the cumulative feedback received since the adoption of the rules implementing section 404, the Commission deems it necessary to issue additional guidance for management on its assessment of the effectiveness of internal control over financial reporting. We currently anticipate that the guidance issued would be in the form of a rule, which would address the topics that we have outlined in this Concept Release: Risk and control identification, management's evaluation, and documentation requirements (each of these topics is addressed separately throughout the remainder of this document). Additionally, we anticipate that the rule would be written in such a manner that if companies followed the rule, they would be deemed to have complied with Rules 13a–15(c) and 15d–15(c) of the Exchange Act. Further, we anticipate any modifications to AS No. 2 would be consistent with the rule.

The Commission is publishing this Concept Release to solicit public comment on the provision of additional guidance to management of public companies that are subject to the SEC's rules related to management's assessment of internal control over financial reporting and, to assist the Commission so that any guidance it ultimately develops addresses the needs and concerns of all public companies. We raise a series of questions throughout this release on assessing risks, identifying controls, evaluating effectiveness of internal control, and documenting the basis for the assessment. Through the questions in this Concept Release, we seek to elicit specific public comment on such matters including, but not limited to, the extent and nature of public interest in the development of additional management guidance, whether additional guidance would be useful for all reporting companies or just a subset of those companies, the particular subject areas that any additional guidance should address, and the extent of additional guidance that would be useful.

Since the Commission adopted rules in June 2003 to implement section 404 of the Sarbanes-Oxley Act, companies and third parties have devoted considerable attention to the methods that management may use to assess the effectiveness of internal control over financial reporting. To date, many public companies have developed their own assessment procedures internally. Many also have retained consultants or purchased commercial software and other products to establish or improve their assessment procedures. When the Commission first adopted the internal control over financial reporting requirements, we emphasized two broad principles: (1) That the scope and process of the assessment must be based on procedures sufficient both to evaluate its design and to test its operating effectiveness;[5] and (2) that the assessment, including testing, must be supported by reasonable evidential matter.[6] We stated that it was important for each company to use its informed judgment about its own operations, risks, and processes in documenting and evaluating its controls. We continue to believe that management must bring its own experience and informed judgment to bear in designing an assessment process that meets the needs of its company and that provides reasonable assurance as to whether the company's internal control over financial reporting is effective.

While we emphasized the concept of management flexibility in adopting our rules implementing section 404, our rules do require management to base its assessment of a company's internal control on a suitable evaluation framework, in order to facilitate comparability between the assessment reports. It is important to note that our rules do not mandate the use of a particular framework, because multiple frameworks exist and others may be developed in the future. However, in the release adopting the Section 404 requirements, the Commission identified the *Internal Control—Integrated Framework* created and published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) as an example of a suitableframework.[7] [8]

While the COSO framework provides an integrated framework that identifies the components and objectives of internal control, it does not set forth detailed guidance as to the steps that management must follow in assessing the effectiveness of a company's internal control over financial reporting. We, therefore, distinguish between the COSO framework as an internal control framework and other forms of guidance that illustrate how to conduct an assessment of the effectiveness of internal control over financial reporting. Any additional management guidance that we may issue is not intended to replace or modify the COSO framework or any other suitable framework.

In determining the need for additional guidance to management on how to conduct its assessment, it is important to consider the steps that already have been taken by the Commission and others to provide guidance to companies and audit firms. The Commission held its first roundtable discussion about implementation of the internal control reporting provisions on April 13, 2005. The Commission held the 2005 roundtable to seek input to consider the impact of the section 404 reporting requirements in view of the fact that the

[5] *See* Adopting Release at Section II.B.3.d.

[6] *See* Adopting Release at Section II.B.3.d.

[7] *See* COSO, *Internal Control-Integrated Framework* (1992). In 1994, COSO published an addendum to the *Reporting to External Parties* volume of the COSO Report. The addendum discusses the issue of, and provides a vehicle for, expanding the scope of a public management report on internal control to address additional controls pertaining to safeguarding of assets. In 1996, COSO issued a supplement to its original framework to address the application of internal control over financial derivative activities.

The COSO framework is the result of an extensive study of internal control to establish a common definition of internal control that would serve the needs of companies, independent public accountants, legislators, and regulatory agencies, and to provide a broad framework of criteria against which companies could evaluate and improve their control systems. The COSO framework divides internal control into three broad objectives: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. Our rules relate only to reliability of financial reporting. Each of the objectives in the COSO framework is further broken down into five interrelated components: control environment, risk assessment, control activities, information and communication, and monitoring. Under the COSO framework, management is able to monitor, evaluate, and improve their control systems through the use of the five components.

[8] In that release, we also cited the *Guidance on Assessing Control* published by the Canadian Institute of Chartered Accountants and the *Turnbull Report* published by the Institute of Chartered Accountants in England & Wales as examples of other suitable frameworks that issuers could choose in evaluating the effectiveness of their internal control over financial reporting. We encourage companies to examine and select a framework that may be useful in their own circumstances and the further development of alternative frameworks.

implementation of the requirements resulted in a major change for management and auditors. A broad range of interested parties, including representatives of managements and boards of domestic and foreign public companies, auditors, investors, legal counsel, and board members of the PCAOB, participated in the discussion. We also invited and received written submissions from the public regarding section 404 in advance of the roundtable.

Feedback obtained from the 2005 roundtable indicated that the internal control reporting requirements had led to increased focus by management on internal control over financial reporting. However, the feedback also identified particular implementation areas in need of further clarification to reduce unnecessary costs and burdens without jeopardizing the benefits of the new requirements.

In response to this feedback, the Commission and its staff issued guidance on May 16, 2005.[9] An overarching message of that guidance was that it is the responsibility of management, not the auditor, to determine the appropriate nature and form of internal controls for the company and to scope their evaluation procedures accordingly. Additionally, based on feedback received, a number of the implementation issues arose from an overly conservative application of the Commission rules and AS No. 2, and the requirements of AS No. 2 itself, as well as questions regarding the appropriate role of the auditor. Accordingly, much of the guidance in the staff statement emphasized and clarified existing provisions of the rules and other Commission guidance relating to the exercise of professional judgment, the concept of reasonable assurance, and the permitted communications between management and auditors.

The staff's guidance addressed implementation issues in the following seven areas:

- The purpose of internal control over financial reporting;
- The concept of reasonable assurance, the importance of a top-down, risk-based approach, and scope of testing and assessment;
- Evaluating internal control deficiencies;
- Disclosures about material weaknesses;
- Information technology issues;
- Communications with auditors; and
- Issues related to small businesses and foreign private issuers.

Overall, the May 16, 2005 guidance was well-received, and some commenters have indicated there has been some improvement in the effectiveness and efficiency of section 404 compliance efforts. However, some constituents, especially smaller public companies, continue to request the provision of additional guidance. For example, in its Final Report to the Commission, issued on April 23, 2006, the Commission's Advisory Committee on Smaller Public Companies raised a number of concerns it perceived regarding the ability of smaller companies to comply cost-effectively with the requirements of section 404. The Advisory Committee identified as an overarching concern the difference in how smaller and larger public companies operate. The Advisory Committee focused in particular on three characteristics: (1) The limited number of personnel in smaller companies constrains the companies' ability to segregate conflicting duties; (2) top management's wider span of control and more direct channels of communication increase the risk of management override; and (3) the dynamic and evolving nature of smaller companies limits their ability to maintain well-documented static business processes.[10]

The Advisory Committee suggests these characteristics create unique differences in how smaller companies achieve effective internal control over financial reporting that may not be adequately accommodated in AS No. 2 or other implementation guidance as currently applied in practice.[11] In addition, the Advisory Committee noted serious cost ramifications for smaller public companies stemming from the cost of frequent documentation change and sustained review and testing for perceived compliance with section 404.

The Advisory Committee's final report set forth several recommendations for the Commission to consider regarding the application of the section 404 requirements to smaller public companies. The Advisory Committee recommended partial or complete exemptions for specified types of smaller public companies from the internal control reporting requirements under certain conditions, unless and until a framework is developed for assessing internal control over financial reporting that recognizes the characteristics and needs of those companies. The Advisory Committee also recommended, among other things, that COSO and the PCAOB provide additional guidance to help facilitate the design and assessment of internal control over financial reporting and make processes related to internal control more cost-effective.[12] In addition, some commenters on the Advisory Committee's exposure draft of its report suggested that the Commission reexamine the appropriate role of outside auditors in connection with the management assessment required by Section 404.[13]

Further, in April 2006, the U.S. Government Accountability Office issued a Report to the Committee on Small Business and Entrepreneurship, U.S. Senate, entitled *Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, which recommends that in considering the concerns of the Advisory Committee, the Commission should assess the available guidance on management's assessment to determine whether it is sufficient or whether additional action is needed. The report indicates that management's implementation and assessment efforts were largely driven by AS No. 2, as guidance at a similar level of detail was not available for management's implementation and assessment process.[14] Further, the GAO report recommended that the Commission coordinate with the PCAOB to help ensure that the section 404-related audit standards and guidance are consistent with any

[9] *Commission Statement on Implementation of Internal Control Reporting Requirements.* Press Release No. 2005–74 (May 16, 2005) (hereinafter ''May 2005 Commission Guidance''); Division of Corporation Finance and Office of Chief Accountant: *Staff Statement on Management's Report on Internal Control Over Financial Reporting* (May 16, 2005) (hereinafter ''May 2005 Staff Guidance'') available at *SEC.gov/spotlight/soxcom/.htm.*

Also on May 16, 2005, the PCAOB and its staff issued guidance to auditors on their audits under Auditing Standard No. 2. The PCAOB's guidance focused on areas in which the efficiency of the audit could be substantially improved. Topics included the importance of the integrated audit, the role of risk assessment throughout the process, the importance of taking a top-down approach, and auditors' use of the work of others.

[10] *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (April 23, 2006) (hereinafter ''Advisory Committee Report'') at 35–36, available at *http://SEC.gov/info/smallbus/acspc.shtml.*

[11] Advisory Committee Report at 37, available at *http://SEC.gov/info/smallbus/acspc.shtml.*

[12] Advisory Committee Report at 52, available at *http://SEC.gov/info/smallbus/acspc.shtml.*

[13] *See, e.g.*, letter from BDO Seidman, LLP (April 3, 2006), available at *http://SEC.gov/info/smallbus/acspc.shtml.*

[14] United States Government Accountability Office Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: *Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies* (April 2006) (hereinafter ''GAO Report'') at 52–53.

additional management guidance issued.[15]

On May 10, 2006, the Commission and PCAOB conducted a second Roundtable on Internal Control Reporting and Auditing Provisions to solicit feedback on accelerated filers' second year of compliance with the section 404 requirements. Although some participants expressed reservations about changing the processes they have already implemented, a number of the participants expressed at the roundtable and in their written comments the view that additional guidance was needed.[16]

COSO plans to publish additional application guidance on its control framework in the near future.[17] This guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It is expected that COSO's new guidance will outline principles fundamental to the five components of internal control described in the COSO framework. The guidance will define each principle and describe the attributes of each, list a variety of approaches that smaller companies can use to apply the principles, and include examples of how smaller companies have applied the principles. As noted in the May 17, 2006 announcement, we anticipate that this guidance will help organizations of all sizes to better understand and apply the COSO framework as it relates to internal control over financial reporting.

We are issuing this Concept Release to understand better the extent of public interest in the development of additional guidance for management regarding its evaluation and assessment of internal control over financial reporting. As noted in our May 17, 2006 announcement, so that this guidance might be helpful to all companies, the Commission currently intends that any future guidance we issue will be scalable and responsive to individual circumstances. We also are interested in understanding what additional guidance accelerated filers would find helpful.[18]

1. Would additional guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting be useful? If so, would additional guidance be useful to all reporting companies subject to the Section 404 requirements or only to a sub-group of companies? What are the potential limitations to developing guidance that can be applied by most or all reporting companies subject to the section 404 requirements?

2. Are there special issues applicable to foreign private issuers that the Commission should consider in developing guidance to management on how to evaluate the effectiveness of a company's internal control over financial reporting? If so, what are these? Are such considerations applicable to all foreign private issuers or only to a sub-group of these filers?

3. Should additional guidance be limited to articulation of broad principles or should it be more detailed?

4. Are there additional topics, beyond what is addressed in this Concept Release, that the Commission should consider issuing guidance on? If so, what are those topics?

5. Would additional guidance in the format of a Commission rule be preferable to interpretive guidance? Why or why not?

6. What types of evaluation approaches have managements of accelerated filers found most effective and efficient in assessing internal control over financial reporting? What approaches have not worked, and why?

7. Are there potential drawbacks to or other concerns about providing additional guidance that the Commission should consider? If so, what are they? How might those drawbacks or other concerns best be mitigated? Would more detailed Commission guidance hamper future efforts by others in this area?

8. Why have the majority of companies who have completed an assessment, domestic and foreign, selected the COSO framework rather than one of the other frameworks available, such as the Turnbull Report? Is it due to a lack of awareness, knowledge, training, pressure from auditors, or some other reason? Would companies benefit from the development of additional frameworks?

9. Should the guidance incorporate the May 16, 2005 ''Staff Statement on Management's Report on Internal Control Over Financial Reporting''? Should any portions of the May 16, 2005 guidance be modified or eliminated? Are there additional topics that the guidance should address that were not addressed by that statement? For example, are there any topics in the staff's ''Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004)'' [19] that should be incorporated into any guidance the Commission might issue?

10. We also seek input on the appropriate role of outside auditors in connection with the management assessment required by section 404(a) of Sarbanes-Oxley, and on the manner in which outside auditors provide the attestation required by section 404(b). Should possible alternatives to the current approach be considered and if so, what? Would these alternatives provide investors with similar benefits without the same level of cost? How would these alternatives work?

III. Risk and Control Identification

While companies have been required to establish and maintain internal accounting controls since the enactment of the Foreign Corrupt Practices Act in 1977,[20] section 404 of the Sarbanes-Oxley Act re-emphasized the importance of the relationship between effective internal controls and reliable financial reporting. An integral element of establishing and maintaining effective internal control over financial reporting involves identifying risks to reliable financial reporting and designing appropriate internal controls that address the risks. The controls that management identifies as addressing risks to financial reporting include those that operate at a company level and are pervasive to many individual account balances and disclosures, as well as those that are specific to certain individual account balances or disclosures. Echoing the Commission's statement in its May 16, 2005 guidance that management must bring reasoned judgment to the process, the staff stated

[15] GAO Report at 58.

[16] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1, 2, 3, and 5; letter from The Institute of Internal Auditors (IIA) (May 1, 2006); letter from Institute of Management Accountants (IMA) (May 4, 2006); letter from Canadian Bankers Association (CBA) (April 28, 2006); letter from Deloitte & Touche LLP (May 1, 2006); letter from Ernst & Young LLP (May 1, 2006); letter from KPMG LLP (May 1, 2006); letter from PricewaterhouseCoopers LLP (May 1, 2006) and letter from Pfizer Inc. (May 1, 2006).

[17] *See* letter from Larry Rittenberg, COSO (May 16, 2006) [File Number 4–511].

[18] We emphasize that the publication of this Concept Release does not reflect a general dissatisfaction by the Commission with the assessments accelerated filers have completed to date. Rather, we are issuing this Concept Release because we are committed to doing as much as we can to reduce any concerns about the nature and extent of assessment procedures that management must establish and maintain, to assist in making the requirements scalable for companies of all sizes and complexity, and to help companies evaluate internal control over financial reporting in a practical and cost-efficient manner.

[19] Available at *http://www.sec.gov/info/accountants/controlfaq1004.htm*.

[20] Title I of Public Law No. 95–213. The FCPA required the Commission to adopt rules requiring public companies to make and keep accurate financial records, and to maintain a system of internal accounting controls. *See* Exchange Act section 13(b).

that management should use its cumulative knowledge, experience, and judgment (applying both qualitative and quantitative factors) in identifying these controls and designing the appropriate procedures for their documentation and testing.

Feedback that the Commission has received indicates that, in implementing the requirements of section 404, many companies did not efficiently and effectively identify risks to reliable financial reporting and relevant internal control functions, ultimately leading to the identification, documentation, and testing of an excessive number of controls.[21] We are also skeptical of the large number of internal controls that some companies have identified, documented and tested. While there were likely numerous contributing factors to these implementation issues, one cause may have been the overly conservative application of AS No. 2 by auditors in the initial years.

The Commission also has heard that companies had difficulty in determining how controls related to the prevention of fraud should be included in their risk assessment.[22] However, as noted in the May 16, 2005 staff guidance, while no system of internal control can prevent or detect every instance of fraud, effective internal control over financial reporting can help companies deter fraudulent financial accounting practices or detect them earlier.

As noted above, the Advisory Committee observed that the distinct characteristics of smaller public companies affect the financial reporting risks and the controls needed to address them. For example, the significant risk of management override that arises from wider spans of control and more direct channels of communication may create an increased need for entity level controls and board oversight. Moreover, the difficulty in segregating duties and changing business processes may impact the implementation of internal controls at these companies.

We anticipate additional guidance in this area would cover a number of the implementation issues that have arisen during the first two years of compliance. Guidance issued in this area would address how management should determine the overall objectives for internal control over financial reporting and identify the related risks. In determining the objectives for internal control over financial reporting, the guidance would discuss how management might address company-level, financial statement account and disclosure level considerations, as well as fraud risks. Additionally, we anticipate that we would provide additional guidance on how management identifies the controls to address the recognized risks. This would include guidance on common issues that exist in identifying controls (e.g. materiality considerations, multi-location issues, concept of ''key'' controls).

11. What guidance is needed to help management implement a ''top-down, risk-based'' approach to identifying risks to reliable financial reporting and the related internal controls?

12. Does the existing guidance, which has been used by management of accelerated filers, provide sufficient information regarding the identification of controls that address the risks of material misstatement? Would additional guidance on identifying controls that address these risks be helpful?

13. In light of the forthcoming COSO guidance for smaller public companies, what additional guidance is necessary on risk assessment or the identification of controls that address the risks?

14. In areas where companies identified significant start-up efforts in the first year (*e.g.*, documentation of the design of controls and remediation of deficiencies) will the COSO guidance for smaller public companies adequately assist companies that have not yet complied with section 404 to efficiently and effectively conduct a risk assessment and identify controls that address the risks? Are there areas that have not yet been addressed or need further emphasis?

15. What guidance is needed about the role of entity-level controls in evaluating and assessing the effectiveness of internal control over financial reporting? What specific entity-level control issues should be addressed (*e.g.*, GAAP expertise, the role of the audit committee, using entity-level controls rather than low-level account and transactional controls)? Should these issues be addressed differently for larger companies and smaller companies?

16. Should guidance be given about the appropriateness of and extent to which quantitative and qualitative factors, such as likelihood of an error, should be used when assessing risks and identifying controls for the entity? If so, what factors should be addressed in the guidance? If so, how should that guidance reflect the special characteristics and needs of smaller public companies?

17. Should the Commission provide management with guidance about fraud controls? If so, what type of guidance? Is there existing private sector guidance that companies have found useful in this area? For example, have companies found the 2002 guidance issued by the AICPA Fraud Task Force entitled ''Management Antifraud Programs and Controls'' [23] useful in assessing these risks and controls?

18. Should guidance be issued to help companies with multiple locations or business units to understand how those affect their risk assessment and control identification activities? How are companies currently determining which locations or units to test?

IV. Management's Evaluation

As noted, the Commission's and the staff's May 16, 2005 guidance emphasized that management's assessment should be based on the particular risks of individual companies, and recommended a top-down, risk-based approach to determine the accounts and related processes that management should consider in its assessment. Therefore, management's judgments about the significance and complexity of the risk areas it has identified should form the basis not only for determining what controls to evaluate, but also for determining the nature, timing, and extent of its evaluation procedures. A risk-based evaluation can allow management to assess whether the company's internal control over financial reporting is effective at a ''reasonable assurance'' level.[24]

One of the reasons cited most frequently by accelerated filers for the higher than anticipated costs in their first year of compliance with the section 404 requirements is that too much work was done to test and document low-risk areas.[25] The Commission continues to hear that management has difficulty applying a top-down, risk-based

[21] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from Protiviti Inc. (April 28, 2006); letter from Computer Sciences Corporation (CSC) (April 28, 2006); and letter from IMA (May 4, 2006).

[22] *See* letter from QUALCOMM Inc. (April 27, 2006); and letter from Diane Allen, 3M (Allen) (April 28, 2006).

[23] Management Antifraud Programs and Controls: Guidance to Help Prevent and Deter Fraud, commissioned by the Fraud Task Force of the American Institute of Certified Public Accounting's Auditing Standards Board (2002), available at *http://www.aicpa.org/download/members/div/auditstd/AU-00316.PDF*.

[24] *See* Rules 13a–15(f) and 15d–15(f) of the Exchange Act.

[25] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from Watson Wyatt Worldwide (March 31, 2006); letter from QUALCOMM Inc. (April 27, 2006); and letter from Association for Financial Professionals (May 1, 2006).

approach in their individual assessments and some believe that compliance costs are, and may continue to be, higher than necessary.[26]

The Commission's rules require that management's assessment be ''as of'' the company's fiscal year end, but the rules do not preclude management from obtaining evidence to support its assessment through cumulative knowledge it acquires throughout the year and in prior years. In fact, management's daily interactions with its internal controls may provide it with an enhanced ability to make informed judgments regarding the areas that present the greatest risk to the reliability of the financial statements, as well as how to evaluate the relevant controls. We have heard anecdotal evidence that, in some cases, management may have unnecessarily tested controls using separate evaluation-type testing in connection with its annual assessment, rather than relying on its ongoing monitoring activities, which may include, for example, cumulative knowledge and experiences from its daily interactions with controls.

In addition to testing, another key part of management's assessment process is the evaluation of control deficiencies it discovers in the process of its evaluation. Paramount to evaluating the significance of an individual control deficiency, or combination of control deficiencies, is to have a comprehensive understanding of the nature of the deficiency, its cause, the relevant financial statement assertion the control was designed to support, its effect on the broader control environment, and whether effective compensating controls exist.[27] Management must exercise judgment in a reasonable manner in the evaluation of deficiencies in internal control, considering both quantitative and qualitative factors.[28]

As noted above, the Advisory Committee observed that the distinct characteristics of smaller public companies affect the assessment of financial reporting risks and the controls implemented to address them. These characteristics may also affect how those companies evaluate their internal control.

Another area where the Commission continues to hear that companies are having difficulty in completing their assessment of internal control over financial reporting involves the impact of information technology (IT) processes. For example, some commenters have expressed concerns over the extent to which IT processes should be included in the scope of their assessment.[29] As the staff's May 16, 2005 staff guidance indicates, Section 404 is not a one-size-fits-all approach to assessing controls, and for that reason, while we believe that controls not related to internal control over financial reporting should not be included in the assessment, providing a list of the exact general IT controls that should be included in an assessment may not be practical. Given that fact, we would like to explore whether there are specific areas related to IT where additional guidance could be provided.

Based on the cumulative feedback received, we believe that guidance on management's evaluation process and revisions to AS No. 2 may help reduce or eliminate the excessive testing of internal controls by improving the focus on risk and better use of entity-level controls. We anticipate that the guidance would cover topics such as the overall objective of evaluation procedures; methods or approaches available to management to gather evidence to support its assessment (*i.e.* on-going monitoring, benchmarking, and updating prior evaluations); and factors that management should consider in determining the nature, timing and extent of its evaluation procedures. This guidance would address whether and how entity-level controls may adequately address risk at the financial statement and disclosure level and considerations as to the extent information technology general controls are included in the scope of management's assessment. Further, we anticipate the guidance would cover considerations of management in determining the severity of an identified control deficiency.

19. What type of guidance would help explain how entity-level controls can reduce or eliminate the need for testing at the individual account or transaction level? If applicable, please provide specific examples of types of entity-level controls that have been useful in reducing testing elsewhere.

20. Would guidance on how management's assessment can be based on evidence other than that derived from separate evaluation-type testing of controls, such as on-going monitoring activities, be useful? What are some of the sources of evidence that companies find most useful in ongoing monitoring of control effectiveness? Would guidance be useful about how management's daily interaction with controls can be used to support its assessment?

21. What considerations are appropriate to ensure that the guidance is responsive to the special characteristics of entity-level controls and management at smaller public companies? What type of guidance would be useful to small public companies with regard to those areas?

22. In situations where management determines that separate evaluation-type testing is necessary, what type of additional guidance to assist management in varying the nature and extent of the evaluation procedures supporting its assessment would be helpful? Would guidance be useful on how risk, materiality, attributes of the controls themselves, and other factors play a role in the judgments about when to use separate evaluations versus relying on ongoing monitoring activities?

23. Would guidance be useful on the timing of management testing of controls and the need to update evidence and conclusions from prior testing to the assessment ''as of'' date?

24. What type of guidance would be appropriate regarding the evaluation of identified internal control deficiencies? Are there particular issues in evaluating deficient controls that have only an indirect relationship to a specific financial statement account or disclosure? If so, what are some of the key considerations currently being used when evaluating the control deficiency?

25. Would guidance be helpful regarding the definitions of the terms ''material weakness'' and ''significant deficiency''? If so, please explain any issues that should be addressed in the guidance.

26. Would guidance be useful on factors that management should consider in determining whether management could conclude that no material weakness in internal control over financial reporting exists despite the discovery of a need to correct a financial statement error as part of the financial statement close process? If so, please explain.

27. Would guidance be useful in addressing the circumstances under which a restatement of previously reported financial information would not lead to the conclusion that a material weakness exists in the

[26] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1 and 2; letter from Pfizer Inc. (May 1, 2006); letter from Sotheby's Holdings, Inc. (May 1, 2006); and letter from U.S. Chamber of Commerce (May 3, 2006).

[27] *See* May 2005 Staff Guidance at B.

[28] *Id.*

[29] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 2 and 3; letter from IIA (May 1, 2006); letter from CSC (April 28, 2006); letter from Allen (April 28, 2006); letter from WPS Resources Corp. (May 5, 2006); and letter from R.G. Scott & Associates, LLC (April 8, 2006).

company's internal control over financial reporting?

28. How have companies been able to use technology to gain efficiency in evaluating the effectiveness of internal controls (*e.g.*, by automating the effectiveness testing of automated controls or through benchmarking strategies)?

29. Is guidance needed to help companies determine which IT general controls should be tested? How are companies determining which IT general controls could impact IT application controls directly related to the preparation of financial statements?

30. Has management generally been utilizing proprietary IT frameworks as a guide in conducting the IT portion of their assessments? If so, which frameworks? Which components of those frameworks have been particularly useful? Which components of those frameworks go beyond the objectives of reliable financial reporting?

V. Documentation to Support the Assessment

Developing and maintaining an appropriate amount of evidential matter is an inherent element of effective internal control.[30] This evidential matter should provide reasonable support for the assessment of whether controls are designed to prevent or detect material misstatements or omissions; for the conclusion that tests to assess the effectiveness of internal control were appropriately planned and performed; and for the conclusion that the results of such tests were appropriately considered in management's conclusion about effectiveness.[31] Further, public accounting firms that attest to, and report on, management's assessment of the effectiveness of the company's internal control over financial reporting may review evidential matter supporting management's assessment.[32]

Feedback that the Commission received in connection with its 2005 Roundtable and other feedback on the first year of compliance indicates that, in implementing the requirements of section 404 for the first time, many companies approached risk and control identification more formally than they may have historically and, consequently, companies may have incurred significant documentation costs.[33] This documentation consisted of, among other things, detailed process maps describing controls over initiating, recording, processing and reconciling account balances, classes of transactions, and disclosures included in the financial statements. Many companies also have indicated that in their initial implementation of section 404, too many controls were identified, which resulted in excessive documentation.[34] Frequently, this excessive documentation was blamed, at least in part, on the auditors and their application of AS No. 2. Further, we have anecdotally heard that this documentation, in many cases, substantially exceeded that normally produced by financial institutions under the Federal Deposit Insurance Corporation Improvement Act of 1991,[35] notwithstanding substantially similar statutory language to that found in section 404.

In its report, the Advisory Committee suggested that smaller public companies have unique characteristics and needs for flexibility that make the documentation elements of section 404 particularly burdensome for those companies. In its opinion, the section 404 internal control reporting requirements as currently applied in practice might impose a lack of flexibility on smaller public companies that would put them at a competitive disadvantage. We have also heard that excessive documentation demands might impose extra or particularly burdensome costs on smaller public companies.

The Commission anticipates that management would benefit from additional guidance on the appropriate and required levels of documentation to support their assertion on the effectiveness of internal control over financial reporting. Topics addressed might include clarifying the overall objectives of the documentation, including factors that might influence documentation requirements and other common documentation concerns (*e.g.* updating of previously created documentation or how to address controls for which operation does not result in documented evidence). We also anticipate that guidance might be helpful in addressing the flexibility and cost containment needs of smaller public companies in particular.

31. Were the levels of documentation performed by management in the initial years of completing the assessment beyond what was needed to identify controls for testing? If so, why (*e.g.*, business reasons, auditor required, or unsure about ''key'' controls)? Would specific guidance help companies avoid this issue in the future? If so, what factors should be considered?

32. What guidance is needed about the form, nature, and extent of documentation that management must maintain as evidence for its assessment of risks to financial reporting and control identification? Are there certain factors to consider in making judgments about the nature and extent of documentation (*e.g.*, entity factors, process, or account complexity factors)? If so, what are they?

33. What guidance is needed about the extent of documentation that management must maintain about its evaluation procedures that support its

[30] Section 13(b)(2)(A) of the Exchange Act requires companies to ''make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.'' We have previously stated, as a matter of policy, that under section 13(b)(2) ''every public company needs to establish and maintain records of sufficient accuracy to meet adequately four interrelated objectives: appropriate reflection of corporate transactions and the disposition of assets; effective administration of other facets of the issuer's internal control system; preparation of its financial statements in accordance with generally accepted accounting principles; and proper auditing.'' Statement of Policy Regarding the Foreign Corrupt Practices Act of 1977, Release No. 34–17500 (January 29, 1981) [46 FR 11544].

[31] Instruction 1 to Item 308 of Regulations S–K and S–B, Instruction 1 to Item 15 of Form 20–F and Instruction 1 to paragraphs (b), (c), (d), and (e) of General Instruction B.6 to Form 40–F provide that ''the Registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.''

[32] AS No. 2 sets forth the criteria auditors should use when evaluating whether management's documentation provides reasonable support for its assessment of internal control over financial reporting. *See* ¶¶ 42–46 of PCAOB Auditing Standard No. 2, *An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.*

[33] *See* transcript of Roundtable on Implementation of Internal Control Reporting Provisions, April 13, 2005; letter from Mortgage Bankers Association (February 25, 2005); letter from Paula Jourde (March 4, 2005); letter from White Mountains Insurance Group (March 29, 2005); and letter from Intel Corporation (March 31, 2005).

[34] *See* transcript of Roundtable on Internal Control Reporting and Auditing Provisions, May 10, 2006, Panels 1 and 2; letter from IIA (May 1, 2006); letter from America's Community Bankers (May 1, 2006); letter from Stephan Stephanov (March 27, 2006); and letter from Institute of Chartered Accountants in England and Wales (March 28, 2006).

[35] 12 U.S.C. 1831m. Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 added section 36, ''Independent Annual Audits of Insured Depository Institutions,'' to the Federal Deposit Insurance Act. Section 36 required the Federal Deposit Insurance Corporation, in consultation with appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution with at least $150 million in total assets, as of the beginning of its fiscal year, to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards, and to provide a management report and an independent public accountant's attestation concerning both the effectiveness of the institution's internal control structure and procedures for financial reporting and its compliance with designated safety and soundness laws.

annual assessment of internal control over financial reporting?

34. Is guidance needed about documentation for information technology controls? If so, is guidance needed for both documentation of the controls and documentation of the testing for the assessment?

35. How might guidance be helpful in addressing the flexibility and cost containment needs of smaller public companies? What guidance is appropriate for smaller public companies with regard to documentation?

VI. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to companies' compliance with the SEC's rules related to management's assessment of internal control over financial reporting. For example, we are interested in whether commenters believe that there are additional topics not addressed in this Concept Release for which guidance would be useful. We also invite commenters to provide to us descriptions of, or actual process plans, that they have utilized or created for portions or all of management's assessment. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations to support or illustrate your comments.

By the Commission.

Dated: July 11, 2006.

Jill M. Peterson,

Assistant Secretary.

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Vol. 71, No. 137

Tuesday, July 18, 2006

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Laws	**741–6000**
Presidential Documents	
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The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, JULY

37807–38052 3
38053–38258 5
38259–38510 6
38511–38752 7
38753–38978 10
38979–39202 11
39203–39510 12
39511–40002 13
40003–40382 14
40383–40636 17
40637–40874 18

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7758 (See 8033) 38255
8033 38255
8034 38509
8035 40383

Executive Orders:
13381 (Amended by 13408) 37807
13408 37807
13409 38511

Administrative Orders:
Presidential Determinations:
No. 2006-17 of June 30, 2006 39511

5 CFR

534 38753

Proposed Rules:
1630 40034
1651 40034
1653 40034
1690 40034

7 CFR

210 39513
215 39513
220 39513
225 39513
226 39513
235 39513
625 38053
922 40637
948 40639
1402 40641
1900 38979

Proposed Rules:
52 39017
205 ..... 37854, 40624
319 38302
457 40194
916 38115
917 38115
925 39019
944 39019
1421 37857

9 CFR

94 38259

10 CFR

72 39520
110 40003

Proposed Rules:
20 37862
32 37862
431 38799

11 CFR

104 38513

12 CFR

201 39520
915 40643

Proposed Rules:
41 40786
222 40786
328 40440
334 40786
364 40786
563 37862
571 40786
615 39235
717 40786
1750 39399

14 CFR

23 39203
25 ..... 38513, 40648
39 ..... 37980, 38053, 38054, 38059, 38062, 38515, 38979, 39521, 40385, 40387, 40389, 40391
71 ..... 38516, 40394, 40651, 40652, 40653
91 40003
97 ..... 38064, 39522, 39523
121 ..... 38517, 40003
125 40003
135 40003

Proposed Rules:
23 ..... 38539, 40443
25 ..... 38539, 38540, 38541, 38542, 39235
33 40675
39 ..... 37868, 38304, 38311, 39020, 39023, 39025, 39237, 39242, 39244, 39593, 39595, 39597, 39600
71 ..... 39247, 40444, 40445, 40447, 40448
91 ..... 38118, 38542
121 ..... 38540, 38541, 38542
125 38542
129 ..... 38540, 38541, 38542

15 CFR

700 39526

Proposed Rules:
740 ..... 38313, 39603
742 ..... 38313, 39603
744 38313
748 ..... 38313, 39603
754 39603
764 38321
766 38321
772 39603

16 CFR

1031 38754

Proposed Rules:
311 38321
681 40786

Proposed Rules:
571.....40057

50 CFR
17.....40657
91.....39011
223.....38270
226.....38277
300.....38297, 38298
622.....38797
648.....40027, 40436
660.....37839, 38111
679 .....38797, 39015, 40028, 40029
680 .....38112, 38298, 40030

Proposed Rules:
17 .....37881, 38593, 40588
300.....39642
648.....38352
679.....39046

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 JULY 18, 2006

DEFENSE DEPARTMENT

Personnel, military and civilian:
- Child and spousal support allotments; published 7-18-06
- Voluntary State tax withholding from retired pay; published 7-18-06

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:
- Board of directors; nomination and election process; published 7-18-06

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Procedural rules, etc.:
- Mine Improvement and New Emergency Response Act of 2006; implementation; published 7-18-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 6-13-06
- Boeing; published 6-13-06
- Bombardier; published 6-13-06
- Empresa Brasileira de Aeronautica S.A. (EMBRAER); published 6-13-06
- Hamilton Sundstrand; published 6-13-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in—
- California; comments due by 7-24-06; published 5-23-06 [FR 06-04747]

Spearmint oil produced in Far West; comments due by 7-25-06; published 5-26-06 [FR E6-08105]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Emerald ash borer; comments due by 7-24-06; published 5-24-06 [FR 06-04812]
- Pine shoot beetle; comments due by 7-24-06; published 5-24-06 [FR 06-04810]

Plant-related quarantine, foreign:
- Fruits and vegetables import regulations; revision; comments due by 7-26-06; published 4-27-06 [FR 06-03897]
- Fruits and vegetables imported in passenger baggage; phytosanitary certificates; comments due by 7-24-06; published 5-24-06 [FR E6-07923]

COMMERCE DEPARTMENT

International Trade Administration

Antidumping and countervailing duties:
- Emergency relief work supplies; importation procedures; comments due by 7-24-06; published 6-22-06 [FR 06-05612]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Gulf of Alaska groundfish; comments due by 7-24-06; published 6-7-06 [FR 06-05104]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Snapper-grouper; comments due by 7-24-06; published 6-9-06 [FR E6-09028]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:
- Commercial and industrial equipment, energy efficiency program—
  - Refrigerated bottled or canned beverage vending machines; meeting and framework document availability; comments due by 7-27-06; published 6-28-06 [FR 06-05838]
- Renewable energy production incentives; comments due by 7-26-06; published 6-26-06 [FR E6-09998]
- Weatherization Assistance Program for low-income persons; renewable energy technologies and systems; comments due by 7-24-06; published 6-22-06 [FR E6-09858]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:
- Arizona, California, and Nevada; comments due by 7-28-06; published 6-28-06 [FR 06-05841]

Air quality implementation plans; approval and promulgation; various States:
- Alabama; comments due by 7-24-06; published 6-22-06 [FR 06-05597]
- Kansas; comments due by 7-26-06; published 6-26-06 [FR 06-05623]
- Missouri; comments due by 7-26-06; published 6-26-06 [FR 06-05625]

Protection of human subjects:
- Pesticides research involving intentional exposure—
  - Nursing women and nursing infants; additional protections; comments due by 7-24-06; published 6-23-06 [FR 06-05649]
  - Nursing women and nursing infants; additional protections; comments due by 7-24-06; published 6-23-06 [FR 06-05648]

Superfund program:
- National oil and hazardous substances contingency plan priorities list; comments due by 7-24-06; published 6-22-06 [FR E6-09748]

Water pollution control:
- National Pollutant Discharge Elimination System—
  - Water transfers; comments due by 7-24-06; published 6-7-06 [FR E6-08814]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
- Ambulance services fee schedule; payment policies revisions; comments due by 7-25-06; published 5-26-06 [FR E6-07929]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological Products:
- Blood vessels recovered with organs and intended for use in organ transplantation; comments due by 7-26-06; published 5-12-06 [FR 06-04369]

Biological products:
- Blood vessels recovered with organs and intended for use in organ transplantation; comments due by 7-26-06; published 5-12-06 [FR 06-04370]

HEALTH AND HUMAN SERVICES DEPARTMENT

Acquisition regulations; comments due by 7-25-06; published 5-26-06 [FR 06-04763]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Resources and Services Administration

Biological Products:
- Blood vessels recovered with organs and intended for use in organ transplantation; comments due by 7-26-06; published 5-12-06 [FR 06-04369]

Biological products:
- Blood vessels recovered with organs and intended for use in organ transplantation; comments due by 7-26-06; published 5-12-06 [FR 06-04370]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Iowa, et al.; comments due by 7-24-06; published 5-25-06 [FR 06-04877]
- New York; comments due by 7-24-06; published 5-24-06 [FR E6-07861]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

National Flood Insurance Program:
- Flood insurance claims; appeals process; comments due by 7-25-06; published 5-26-06 [FR E6-08180]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Immigration:
- Premium Processing Service—

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 889/P.L. 109–241

Coast Guard and Maritime Transportation Act of 2006 (July 11, 2006; 120 Stat. 516)

Last List July 10, 2006

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