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# Federal Register

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 922

**[Docket No. FV06–922–2 IFR]**

## Apricots Grown in Designated Counties in Washington; Temporary Relaxation of the Minimum Grade Requirement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule relaxes the minimum grade requirement 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 rule relaxes the minimum grade requirement for fresh apricots from Washington No. 1 grade to Washington No. 2 grade. This rule will enable handlers to ship more fruit into fresh market channels, taking into consideration hail damage caused to Washington apricots during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers.

**DATES:** Effective August 3, 2006, through March 31, 2007. Comments received by October 2, 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*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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:** 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.''

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. This rule is not intended to have retroactive effect. 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 relaxes the minimum grade requirement for fresh apricots from Washington No. 1 grade to Washington No. 2 grade. This rule will enable handlers to ship more fruit into fresh market channels, taking into consideration hail damage caused to Washington apricots during the growing season. This change is expected to increase returns to producers and to make more fresh apricots available to consumers. The minimum grade requirement will revert to Washington No. 1 grade on April 1, 2007, for the 2007 and future seasons.

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 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52. Section 922.55 provides that whenever apricots are regulated pursuant to §§ 922.52 or 922.53, such apricots must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Minimum grade, maturity, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation 21*. Section 922.321 provides, in part, that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments subject to exemption under the regulation. In addition, the section provides that the Moorpark variety in open containers must be generally well matured. That section also provides that, with the exception of exempt shipments, apricots must be at least reasonably uniform in color, and be not less than 1⅝ inches in diameter, except

for the Blenheim, Blenril, and Tilton varieties which must be not less than 1¼ inches in diameter. Individual shipments of apricots are exempt from these requirements if sold for home use only, do not, in the aggregate, exceed 500 pounds net weight, and each container is stamped or marked with the words ''not for resale.''

This rule revises paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 to Washington No. 2 for the 2006 season only. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons.

Based on a request from a handler representing several producers, the Committee recommended by a vote of nine to one that the grade requirement be relaxed for the 2006 season to facilitate the handling of fruit damaged by hail. The Committee requested that this relaxation be effective by the beginning of the 2006 Washington apricot shipping season, which is expected to be around July 1, 2006.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been 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 information submitted by, and recommendations from, the Committee and other available information to determine whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee has conveyed to USDA that widely scattered hail damage was reported within the Washington apricot production area as a result of late spring storms. The severe weather conditions resulted in damage to the crop making it difficult for apricots to meet the minimum grade requirements of Washington No. 1. The Committee's original crop estimate for the 2006 season was established at 5,000 tons. With the full extent of hail damage unknown at this time, the Committee has not established a revised crop estimate. However, taking into account the reported damage, this rule provides for the handling of a larger portion of the Washington apricot crop this season than would be allowed if the minimum grade requirement were to remain at Washington No. 1. Relaxation of the grade requirement for the 2006 Washington apricot crop is intended to increase fresh shipments to meet consumer needs and improve returns to producers.

This rule relaxes the grade requirement specified in § 922.321. This rule will not effect the color and minimum size requirements for all varieties or the well matured requirements for the Moorpark variety.

**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.

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 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.

Average revenue per handler can be estimated using f.o.b. prices. According to USDA's Market News Service, 2005 fresh apricot 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 (which weigh an average of about 20 pounds each). Total apricot sales revenue at the f.o.b. shipper level can be estimated by taking the midpoints of each of the two ranges ($17.50 and $19.00) as representative annual average prices for each of the container types. The 2005 season fresh apricot pack-out of 4,471 tons can be assumed to be equally divided between the two container types, yielding an estimated quantity packed in each container type of 2235.5 tons, or 4.471 million pounds. Dividing this quantity by the pounds per container yields the following handler sales revenue estimates: (a) 186,292 24-pound loose-pack containers, with an average price of $17.50, valued at $3,260,110 and (b) 223,550 two-layer tray pack containers, with an average price of $19.00, valued at $4,246,500. Combining the estimated handler sales revenue for the two container types ($7,506,610) and dividing by the number of handlers (22) yields an annual average fresh apricot sales revenue estimate per handler of $341,210. Since this figure is well under $750,000 (the SBA definition of the minimum sales of a large agricultural service firm), it is reasonable to assume that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule revises paragraph (a)(1) of § 922.321 by temporarily changing the minimum grade requirement for fresh shipments of apricots from Washington No. 1 to Washington No. 2 for the 2006 season only. The Washington No. 1 minimum grade requirement will resume April 1, 2007, for the 2007 season and future seasons. 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 922.53 further authorizes the modification, suspension, or termination of regulations issued pursuant to § 922.52.

The Committee anticipates that this rule will not negatively impact small businesses. This rule relaxes the minimum grade requirement in the order's handling regulations and should provide enhanced marketing opportunities.

Given the emergency nature of the relaxation, the Committee's recommendation was made via the vote-by-mail procedures of the order. With ten of the twelve members responding, nine members supported the temporary grade change and one member opposed it. The only alternative to a grade relaxation offered on the ballot was to leave the minimum grade at Washington No. 1, which was not adopted.

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.

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.

This rule invites comments on relaxation of the minimum grade requirement under the Washington apricot marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the minimum grade requirement in § 922.321 should be temporarily relaxed from Washington No. 1 grade to Washington No. 2 grade in order 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) This rule relaxes the minimum grade requirement for Washington apricots for the 2006 shipping season; (2) Washington apricot handlers are aware of this recommendations and need no additional time to comply with the relaxed requirements; (3) this rule should be in effect as close as possible to July 1, 2006, the date shipments of the 2006 Washington apricot crop are expected to begin; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 922**

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 922 is amended as follows:

## PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR Part 922 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 922.321 [Amended]**

■ 2. Section 922.321 is amended by revising paragraph (a)(1) to read as follows:

(a) * * *

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That during the period July 1, 2006, through March 31, 2007, the minimum grade requirement for such apricots shall be not less than Washington No. 2; *Provided further,* That such apricots of the Moorpark variety in open containers shall be generally well matured: and

* * * * *

Dated: July 27, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–12410 Filed 8–1–06; 8:45 am]

**BILLING CODE 3410–02–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1614

**RIN 3046–AA74**

### Federal Sector Equal Employment Opportunity

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is issuing a final rule implementing the posting requirements set forth in Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174. The No FEAR Act requires a Federal agency to post on its public Web site summary statistical data pertaining to complaints of employment discrimination filed under 29 CFR part 1614 by employees, former employees and applicants for employment. Title III authorizes EEOC to issue rules concerning the ''time, form and manner'' of the postings, to define the terms ''issue'' and ''basis,'' and to issue any other ''rules necessary to carry out'' Title III.

**DATES:** *Effective Date:* August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, Gary John Hozempa, Senior General Attorney, or Mona Papillon, Senior General Attorney at (202) 663–4669 (voice) or (202) 663–7026 (TTY). This final rule also is available in the following alternative formats: large print, braille, audiotape and electronic file on computer disk. Requests for the final rule in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On January 26, 2004, EEOC published in the **Federal Register** an interim final rule setting forth the time, form and manner in which an agency shall post summary statistical EEO complaint data. 69 FR 3483 (2004). The interim rule included a 60-day comment period, which subsequently was extended an additional 30 days. 69 FR 13473 (2004).

EEOC received over 140 comments on the interim rule. One hundred and nine comments were submitted by persons identifying themselves as members of the ''No FEAR Coalition.'' Sixteen comments were submitted by Federal agencies and departments. Four comments were submitted by civil rights groups composed of Federal employees, one was submitted by a national civil rights group, one by an association of Federal EEO executives, one by a Member of Congress, and one was submitted by an association of Federal agency Web content managers. EEOC also received seventeen comments from individuals, most of whom identified themselves as Federal or former Federal employees.

The Commission has considered carefully all of the comments and has made some changes to the interim rule in response to the comments. The comments EEOC received and the changes made to the interim rule are discussed in more detail below.

**Amendments to Complaints**

When EEOC circulated its first draft of the interim rule under Executive Order 12067, the regulation required that, when posting information about the bases and issues raised in a complaint, agencies include bases and issues added by amendment. Agencies commenting on this provision argued that if bases and issues added by amendment were to be included among the data, withdrawals of issues and bases likewise should be reflected. When

EEOC issued its interim final rule it decided to drop the requirement that agencies track amendments.

Based on comments received on the interim final rule, both from agencies and members of the public, EEOC has reconsidered its approach and now believes that bases and issues added by amendment should be included among the posted data. EEOC is particularly concerned that the number of times retaliation is alleged will not be portrayed accurately if amendments are not tracked. As a number of commenters noted, complainants often allege that they have been retaliated against for having filed an earlier, pending complaint. These claims of retaliation are considered like and related to the initial complaint and therefore must be treated as amendments to the initial complaint rather than as separate complaints. See EEOC Management Directive 110, Chapter 5, Example 6 at page 5–11. Since EEOC believes amendments adding a claim of retaliation need to be captured, EEOC also believes it is best to capture all issues and bases that are added.

Tracking amendments requires that an agency post the basis or issue raised in the amendment when it is time to post quarterly or year-end data for the current fiscal year, whichever posting period occurs first after a complaint is amended. Where the amendment of a complaint filed in a prior fiscal year occurs in the current fiscal year, an agency shall not go back and modify prior fiscal year data regarding issues and bases since prior year data in these categories is unaffected by amendments occurring in subsequent fiscal years.

**Bases and Issues**

The interim rule requires that an agency post the number of complaints raising each basis of alleged discrimination and the number of complaints raising each challenged employment action. A few agencies opined that this will make it appear as if more complaints have been filed than is actually the case.

Given that sections 301(b)(4) and (5) of the No FEAR Act specifically require that this information be posted, EEOC does not have the discretion to change this part of the rule. Moreover, agencies must post the total number of complaints filed. Persons viewing all three data categories will be able to ascertain that the total number of times a basis or issue is asserted does not correspond to the number of complaints actually filed. Therefore, there is no basis for concern that the number of complaints filed will appear inflated.

Other commenters objected to the requirement that an agency post a complaint as having been filed even if it raises a basis not protected by one of the Federal EEO statutes. One objection was that such a complaint is not really an EEO complaint and therefore should not be counted. Another objection was that the inclusion of complaints raising a non-EEO basis unintentionally could convey the message that an EEO complaint can be maintained regardless of the basis alleged.

The very designation ''non-EEO'' basis will alert a viewer that the complaint falls outside the scope of the EEO laws. Thus, EEOC does not believe that requiring agencies to post this information will mislead the public into believing that employment discrimination laws protect an employee or applicant from non-covered forms of discrimination. Complaints raising a non-EEO basis, such as whistle blowing, will be dismissed. EEOC believes, however, that it is important to know how many claims filed under part 1614 do not belong in that process because it may indicate that employees need to be better informed of their rights and the correct forums in which to pursue their allegations of wrongdoing, or that persons are misusing the EEO complaint process.

A few commenters were concerned about bases that are mislabeled by a complainant. Where a complainant appears to misidentify a basis (e.g., the complainant alleges race discrimination and identifies her race as ''Danish'') and the agency determines that the complainant's intent is to raise a national origin claim, the agency shall post only the corrected basis.

**Counseling**

A few commenters objected to the absence of counseling data in the posting requirements, arguing that counseling is an important part of the process. EEOC's initial decision not to have agencies post counseling activity was based on its conclusion that the No FEAR Act does not address pre-complaint activity, which would include counseling. Nothing proffered in the comments convinces EEOC that its initial interpretation was in error.

That EEO counseling activity will not be tracked under the No FEAR Act does not lessen its importance or minimize EEOC's belief that counseling is a vital component of the Federal sector complaint process. Many matters brought to a counselor's attention are resolved before they become formal complaints. Counselors further perform the very valuable function of assisting complainants to accurately define the matters about which they wish to complain. EEOC requires agencies to report counseling activity on the Form 462 (''Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints'') because it believes the counseling function is significant.

**Definitions**

Based on some of the comments EEOC received, there appears to be some confusion regarding the definition of ''appeal'' under § 1614.702(i). The appeal step of the process is to be distinguished from the request for reconsideration stage. Consequently, when posting data pursuant to § 1614.704(l)(2)(ii) (pending complaints filed in prior fiscal years) agencies need not track a complaint that is awaiting a decision on a request for reconsideration because it is not pending at the appeal stage.

**EEOC Form 462**

A few agencies opined that, now that they must post EEO data under Title III (and report EEO data under Title II), EEOC should discontinue the use of EEOC Form 462. As an alternative, a few agencies suggested that they be allowed to consolidate EEOC Form 462 with the information they must post under the No FEAR Act.

Form 462 seeks more, and in many cases different, information than is required to be posted under the No FEAR Act. While the posting of No FEAR data is primarily for use by the public, Form 462 data is intended for EEOC use and is delivered directly to EEOC for this reason. In addition to reporting consolidated Form 462 data to Congress, EEOC reviews each agency's report to assess that agency's compliance with its EEO obligations under part 1614. These roles, reporting to Congress and assessing an agency's EEO program, are not responsibilities given to EEOC under the No FEAR Act. As a result, EEOC does not regard an agency's posting obligations under the No FEAR Act as serving the same purpose as its Form 462 reporting requirements. For these reasons, EEOC will not discontinue the use of Form 462.

**Enforcement**

A number of comments focused on the fact that the interim rule does not contain an enforcement mechanism in the event an agency fails to post its EEO data. Some commenters want EEOC to fashion a scheme in which EEOC can sanction agencies and agency managers for non-compliance. While directing the

Commission to establish the ''time, form, and manner'' in which an agency must post its EEO data, the statute does not specify what action, if any, EEOC may take in the event an agency does not fulfill its posting obligations. Since the statute neither authorizes EEOC to sanction agency non-compliance nor sets forth the means by which EEOC can compel compliance, EEOC has not created an enforcement mechanism.

**Government-Wide Data**

A few commenters suggested that EEOC post government-wide EEO statistics on its Web site, using each agency's posted data as the source material. Since the statute does not require EEOC to post consolidated data and given that EEOC already consolidates Form 462 data, which overlaps somewhat with the No FEAR data, EEOC has decided not to consolidate government-wide No FEAR data.

In a similar vein, commenters suggested that EEOC post on its Web site a regularly updated listing indicating which agencies fully are in compliance with the posting requirements, partially are in compliance, or have not posted data. Again, this is beyond the responsibilities imposed by the statute and EEOC therefore will not implement the suggestion.

**Issuance of the Interim Final Rule**

Some commenters questioned EEOC's reasons for issuing an interim final rule rather than a final rule. EEOC's implementation of this rule as an interim final rule with provision for post-promulgation public comment was based upon the exceptions found at 5 U.S.C. 553(b)(A), (b)(B) and (d). Agency posting obligations under Title III of the No FEAR Act began in the first quarter of FY 2004. It was essential that agencies understood their responsibilities regarding the posting requirements so that they could begin capturing EEO data immediately. EEOC determined under 5 U.S.C. 553(b)(A) that this regulation, which covers the time, form and manner of agency postings under Title III of the No FEAR Act, affects agency organization, procedure, or practice and has no effect on the substantive rights of non-agency parties. In addition, it was feared that the absence of rules or the later promulgation of rules would result in confusion concerning the posting requirements, to the detriment of the public. EEOC therefore determined under 5 U.S.C. 553(b)(B) that it would be contrary to the public interest to delay promulgation of these rules by issuing a notice of proposed rule making rather than the interim final rule that was issued. For the same reasons, EEOC determined under 5 U.S.C. 553(d)(3) that there was good cause for the rule to become effective immediately upon publication with provision for post-promulgation public comment. An additional advantage to this approach was that agencies were able to try out the rules, and the public was able to observe how agencies sought to comply with them, thus informing the comments they submitted to EEOC.

**Link Location, Link Name, Search Engines and URLs**

Section 1614.703(d) of the interim rule requires an agency to title its posted EEO information ''Equal Employment Opportunity Data Posted Pursuant to the No Fear Act.'' This section further requires an agency to prominently place a hyperlink to the data on the homepage of its public Web site. There was some objection both to the location of the hyperlink and its name.

As for the location, agencies argue that their homepages already are well populated with hyperlinks which primarily are mission-specific. Adding another hyperlink, thereby producing crowding, may in fact be counter-productive. Moreover, many people visiting an agency Web site do so through hyperlinks from other non-agency Web sites or search engines that bypass an agency's homepage. Some agencies allow internet users to compose a personal homepage, which again bypasses the agency's standard homepage. For these and other reasons, the agencies that commented uniformly were of the opinion that a hyperlink on an agency's homepage is not the best way to ensure the public's assess to an agency's posted EEO data. These agencies therefore suggested that each agency decide itself where to place its EEO data and hyperlinks to that data since each agency best knows where a target audience goes to look for certain information. A number of agencies offered suggestions where the hyperlink would be better placed, such as on the ''About the Agency'' or ''Working for the Agency/Employment'' pages.

The Commission is concerned that without a uniform hyperlink location members of the public seeking EEO data from more than one agency will have trouble finding the data. If one agency's hyperlink is on the ''About the Agency'' page, another's is on the ''Employment Opportunities'' page, another's is on a page entitled ''Civil Rights,'' and another's is on the homepage, locating the data for multiple agencies could well end up as an exercise in trial and error. Even assuming that the homepage is not the best or most intuitive location for the hyperlink, EEOC is convinced that it would not be in the public interest to allow each agency to decide where on its Web site it will place the hyperlink. Thus, if not the homepage, EEOC must dictate another uniform location. The problem is that there are no other locations common to all agency public Web sites. Agencies do not label their ''About the Agency'' and ''Employment'' pages identically. Not every agency has an ''Employment Opportunities page. Thus, there is no way to standardize through a rule an alternative location for the link. This leaves only the homepage as the one Web page all agencies possess in common, and therefore it is the homepage which shall house the link.

Regarding the title of the hyperlink, EEOC agrees that it is too wordy. EEOC, however, does not agree that the label ''No FEAR'' will be widely misunderstood by members of the public. On the contrary, the term ''No FEAR Act'' has attained familiarity among employees and those involved in EEO matters. Accordingly, the final rule provides that the hyperlink shall be called ''No FEAR Act Data.'' However, agencies will be required to title the page where its data appears as follows: ''Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174.''

In furtherance of making every agency's No FEAR Act data easily accessible, it was suggested that agencies maintain their posted data so that it is readily retrievable by commercial search engines. EEOC agrees and has added a subsection setting forth this requirement.

Finally, some commenters suggested that each agency provide EEOC with the hyperlink to its No FEAR data and that EEOC post the agency hyperlinks in one location on EEOC's public Web site. EEOC has decided to adopt this suggestion. Therefore, the final rule contains the requirement that an agency provide EEOC with the URL for the location of its No FEAR data and provide URL updates as necessary. Agencies can e-mail their URLs to EEOC at *NoFEAR.URLS@eeoc.gov.*

**Other Data**

Some commenters disagreed with EEOC's position that EEO data not required to be posted by the statute cannot be posted with No FEAR data but may appear elsewhere. Commenters argued that by excluding other, related

data, agencies are forced to present an incomplete view of their EEO performance. Commenters especially believed data regarding complaints found to be without merit by an administrative judge or EEOC should be posted along with the No FEAR Act data.

Other commenters wanted additional information posted because they believe it would indicate whether an agency is engaging in a pattern of discrimination, or is unfairly processing complaints, or obstructing the EEO complaint process. It was suggested, for example, that agencies post the grade levels of persons filing complaints, the number of complaints that allege unfair processing, the number of work hours an agency expends on EEO complaint processing, the number of days beyond the regulatory time frame it takes an agency to complete an investigation in a specific case, and the number of terminations, including constructive discharges, for each protected group.

Admittedly, the categories of data set forth in the statute do not present a complete view of an agency's EEO compliance. But the categories represent the information Congress deems most important and EEOC believes this information should not be obscured or rendered less prominent through juxtaposition with other non-required data. Consequently, the final rule specifically prohibits an agency from co-mingling other data with that required to be posted under the statute. An agency may, however, include a link on the No FEAR data page to any additional or related data it posts on another Web page.

**Pending Complaints Filed in Prior Fiscal Years**

As explained in the preamble to the Interim Final Rule, section 301(b)(10) of the No FEAR Act ''specifies that an agency must look at all complaints pending in a current fiscal year and post the number that were filed before the start of that fiscal year * * * The Act further requires an agency to post the number of individuals who filed the complaints that were filed before the start of the current fiscal year * * * [O]f the complaints that were filed prior to the current fiscal year and are still pending, the agency shall specify how many of the complaints are at each specific processing step.''

Section 1614.704(k) of the Interim Final Rule was intended to implement sections 301(b)(10)(A) and (B) of the Act. As one commentor pointed out, subsections 1614.704(k)(2) and (3) as contained in the Interim Final Rule can be read as applying to all pending complaints and not just those that were filed in prior fiscal years. The Commission agrees that the language of these provisions is overbroad and has redrafted them in re-designated subsections 1614.704(l)(2)(i) and (ii) to make clear that they apply only to pending complaints filed in prior fiscal years.

**Posting by Subelements**

The interim final rule provides that an agency must post on its public Web page separate data pertaining to its subelements. The interim final rule defines a subelement as ''any organizational sub-unit directly below the agency or department level which has 1,000 or more employees.'' A few persons commented that the 1,000 employee threshold is too low. Others argued that it is too high. EEOC chose the 1,000 employee figure because that was the figure EEOC was planning to use for reporting under EEOC Management Directive 715 (affirmative programs of equal employment opportunity). After the interim final rule was published, EEOC issued instructions for compliance with EEOC Management Directive 715 (MD–715). These instructions require that, of those subordinate components having 1,000 or more employees, only those ''enjoying a certain amount of autonomy'' constitute subordinate components for purposes of reporting under MD–715.

In order to maintain consistency, the final rule adopts the distinction used in reporting under MD–715. As a result, the final rule substitutes the term ''subordinate component'' for ''subelement.'' The definition of ''subordinate component'' is the same as the definition of ''second level reporting component'' used in the instructions to MD–715. The change to the definition will mean that there will be fewer subordinate components for which separate data must be posted. More importantly, requiring agencies to report on subordinate components based on functional criteria, such as operating autonomy from the parent agency, will result in more meaningful data.

The concept of subordinate components is discussed in Question and Answer No. 5 in EEOC's publication, ''Frequently Asked Questions About Management Directive-715,'' which can be accessed at *http://www.eeoc.gov/federal/qanda-md715.html.* A list of the second level subordinate components can be accessed at *http://www.eeoc.gov/federal/715instruct/agencylist.html.*

Some commenters objected to the fact that EEOC is not requiring agency subordinate components to post component data on their respective public Web pages. The final rule requires that an agency with a qualifying subordinate component post on the parent agency's public Web site both consolidated, agency-wide, EEO data (i.e., data deriving from the entire parent agency including any subordinate components) and separate data for each of its subordinate components. The physical location of where this data is posted, whether on the agency's public Web page or the component's, should not matter to the end-user. The final rule requires that subordinate components that have their own Web sites shall post a link on their homepages to their component-specific data. So long as a link to the component's data can be found on both the component's and parent agency's Web homepages, the data can be accessed from either Web site. In short, being able to access the data is what is important, not where in cyberspace the data is stored.

**Posting Format**

In the preamble to the interim rule, EEOC stated that it had not decided whether to mandate a uniform posting format and layout but would revisit the issue when promulgating the final rule. No agency stated that EEOC should not develop a standard format. Thirteen agencies, on the other hand, asked EEOC to develop a standardized form or format for posting data. The rationale most often cited was that a uniform template would make it easier for interested parties to compare data among agencies. Interestingly, some agencies favoring a template nevertheless wanted to be able to choose whether to use EEOC's template or another one.

In the Commission's view, there is no point in making a template available if its use is not mandatory. A random review of agency Web sites indicates that there are a variety of formats in use. Some agencies, for example, present data in ascending chronological order while others do the opposite. Some agencies use formats that omit certain categories of data. Having given the matter careful consideration, EEOC has decided that a uniform template will make it easier to compare agency data and help agencies to post all required data. Accordingly, we have created a standard format that must be used by all agencies having 100 or more employees and all subordinate components. Two smaller agencies suggested that agencies having minimal EEO complaint activity use a modified posting format appropriate to the amount of data being

reported. EEOC agrees. Therefore, agencies having fewer than 100 employees have the option of using any posting format that provides all required information for those complaints.

The Commission has devised a format setting forth the manner in which agencies must present their No FEAR data on their public Web sites. The format is intended to give agencies a visual indication of how data is to be presented. This format can be viewed on EEOC's public Web site at *http://www.eeoc.gov/stats/nofear/index.html.*

As can be seen, prior fiscal year and cumulative quarterly data shall be presented in vertical columns. The current cumulative quarterly data shall appear in the right-most column for which data is entered (the last column reading left to right), and the most recent prior fiscal year data shall appear in the column immediately to the left of the cumulative quarterly data. The data for the remaining fiscal years shall appear in each succeeding column to the left, so that the oldest fiscal year data appears in the left-most column for which data is posted.

The categories of data that must be posted shall appear in the horizontal rows. The first row for which data is posted shall contain the number of complaints filed for that particular reporting period. The remaining rows shall, reading top to bottom, contain the data set forth in subsections 1614.704(a)–(m) in the order in which each subsection occurs in the regulation.

While developing the standard format, we noted some inconsistencies between the bases listed in § 1614.702(j) and reported on EEOC Form 462. First, the interim rule uses the term ''retaliation'' whereas Form 462 uses the term ''reprisal.'' Second, Form 462 lists the Equal Pay Act as a basis while interim 702(j) does not. Finally, the order of the bases as listed in interim 702(j) differs slightly from that on Form 462. In order to regularize an agency's reporting burdens, while at the same time enhancing the degree of detail available to the public through the posting of No FEAR data, we have decided to conform the bases in the final version of section 702(j) to that on Form 462. Accordingly, we have added the Equal Pay Act basis, changed the term ''retaliation'' to ''reprisal,'' and listed the bases in the manner in which they appear on the Form 462. The term ''reprisal'' as used in this subpart should not be construed to include the type of reprisal covered by the Federal whistleblower protection laws. Rather, it refers to any action taken against an individual either because that individual opposed any practice made unlawful by the Federal employment discrimination laws or participated in any manner in any proceeding under those laws.

**Public Hearings**

Seventy-eight percent (78%) of the comments were received from the No FEAR Coalition or persons identifying themselves as members of the No FEAR Coalition. The No FEAR Coalition members submitted their comments using an identical or nearly identical letter. The Coalition requested that EEOC convene public hearings in different parts of the country in order to address the issues of employment discrimination and EEOC's rule making under the No FEAR Act. The Coalition requested that EEOC establish a citizens' advisory board that would oversee EEOC's promulgation of this final rule. The Coalition made suggestions that have been raised by other commenters, such as developing a rule that will ensure managers found to have engaged in discrimination are appropriately disciplined, that these manager's names be provided to Congress, that counseling data be among that required to be posted, that amendments to complaints be tracked, and that data pertaining to agency subordinate components be posted.

Those comments provided by the Coalition and which also were raised by others are discussed both above and below. With respect to holding public hearings as part of the rule making process, EEOC is required by the Administrative Procedure Act to ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.'' 5 U.S.C. 553(c). Thus, although an agency is permitted to accept comments through oral presentations, it is not required to do so. There is certainly no requirement in the Act for a public hearing. EEOC believes that the written comment process has provided meaningful public participation in this rule making.

In this regard, EEOC extended the initial 60-day public comment period and additional 30 days at the request of the No FEAR Coalition. As noted, many members of the Coalition submitted comments which the Commission carefully has considered. Additionally, during the public comment period the Chair of the Commission met with members of the No FEAR Coalition to discuss the substance of EEOC's rule making. We believe the public, including the No FEAR coalition, have had a meaningful opportunity to participate in the Title III No FEAR rule making process.

Moreover, EEOC's rule making duties under Title III of the No FEAR Act are straightforward. Title III requires an agency to post on its public Web site summary statistical data pertaining to complaints of employment discrimination filed with the agency. The statistics that shall be posted are set forth specifically in the statute. EEOC's only role is to issue rules establishing the ''time, form and manner'' in which the statistics are posted. In such a narrow context, public hearings as an adjunct to written comments would not better inform EEOC's rule making process in any appreciable manner. It is unlikely that ideas as to when or how pre-defined statistics should be posted on an agency Web site could or would be better communicated orally than in writing. Accordingly, EEOC concludes that holding the suggested regional public hearings will not significantly aid the rule making process. Similarly, EEOC does not believe it would be advantageous to convene a citizens' advisory board. Finally, as noted above, holding public hearings or convening a citizens advisory committee is not required by the No FEAR or Administrative Procedure Acts.

**Remands**

A number of complaints are dismissed by agencies on procedural grounds (e.g., failure to comply with the applicable time limits, failure to state a claim). The complainant can appeal the dismissal to EEOC. If EEOC finds the complaint was dismissed improperly, EEOC remands the complaint to the agency for further processing. A few commenters inquired how these complaints should be handled once they are returned to the agency for processing.

Once the complaint is remanded, the agency will have to track its status for posting purposes but only with respect to subsequent information applicable to the remanded complaint. Thus, for example, information previously posted about the issues and bases raised in the complaint shall not be changed regardless of whether the remanded complaint is returned to the agency with more, less, or different issues and bases. All pertinent information applicable to the subsequent processing of the complaint (e.g., whether it was timely investigated following remand, whether it subsequently involves a finding of discrimination with or without a hearing) shall be posted. With respect to remanded complaints where the investigation was not completed prior to the agency's dismissal of the complaint,

the investigative period for purposes of § 1614.704(f) will include both the period between the dates the complaint initially was filed and dismissed and the period between the dates the EEOC's remand becomes final and the investigation is completed. For purposes of posting data under § 1614.704(l) (pending complaints filed in prior fiscal years), a remanded complaint will retain its original filing date.

**Settlements**

A few commenters noted that the interim final rule is silent on the issue of settlements and asked how settlement information should be tracked. The No FEAR Act does not require an agency to post settlement information (e.g., how many complaints were settled, when or where in the process settlement took place, the bases and issues that were settled, etc.) and consequently neither the interim nor the final rule deal with settlements. Prior to settlement, an agency shall post all required information (e.g., a complaint was filed, the number of persons who filed the complaint, the issues and bases raised in the complaint, whether the investigation was completed within the applicable period if settlement occurred after the investigative step). Once a complaint is settled, subsequent information about the complaint does not have to be tracked (but see next paragraph). An allegation by a complainant, pursuant to 29 CFR 1614.504, that the agency has breached a settlement agreement does not constitute a complaint for purposes of this subpart and therefore information about a breach allegation is not information that must be posted.

In certain breach situations, a previously settled complaint can be reinstated by EEOC and the agency ordered to process the complaint from the point processing ceased at the time of settlement. See 29 CFR 1614.504(c). All pertinent information applicable to the subsequent processing of the reinstated complaint shall be posted. An agency shall ignore, however, the period between the settlement date and the date EEOC's reinstatement decision becomes final when posting data under § 1614.704(f) and (m).

It should be noted that while Title III of the No FEAR Act does not require an agency to post data regarding settlements, the reporting provisions under Title II of the Act apply to certain agreements made in settlement of claims brought under Federal antidiscrimination and whistleblower protection laws. In reporting the amounts reimbursed to the Judgment Fund, an agency must include any payments made as part of a settlement agreement in connection with litigation in Federal court. Also in connection with cases brought in Federal court, including those that are settled, an agency must report the number of employees disciplined and the types of disciplinary actions taken for conduct inconsistent with Federal antidiscrimination and whistleblower protection laws.

**Short Form Title**

Some commenters objected to EEOC's use of the term ''No FEAR Act'' as a shorthand method of referring to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. These commenters opined that the term does not appear in the statute, use of the phrase in the Library of Congress's Thomas search engine does not lead to the statute, members of the public may confuse the term with matters having to do with homeland security, and members of the public will not associate the term with employment discrimination.

The term ''No FEAR'' is, like most shorthand titles for statutes, an acronym: **N**otification and **F**ederal **E**mployee **A**ntidiscrimination and **R**etaliation Act. It is the popular name by which this statute is known and it is commonly and widely used in the media and throughout the Federal government. The full name of the statute appears at the beginning of this preamble and the regulation. EEOC believes this provides the public with information sufficient both to know under what statute these rules are being promulgated and to find the statute should members of the public wish to read it.

**Title II Issues**

While Title III of the No FEAR Act requires an agency to post EEO complaint data on its public Web site, Title II imposes other requirements. With respect to Federal employment discrimination and whistleblower protection laws, Title II mandates, among other things, that an agency: (1) Reimburse the Judgment Fund for payments concerning violations or alleged violations of Federal employment discrimination laws, Federal whistleblower protections laws, and retaliation claims arising from the assertion of rights under these laws; (2) notify covered individuals of their rights and protections under the Federal EEO laws; and (3) submit an annual report to Congress, EEOC, the Office of Personnel Management, and the Attorney General detailing, among other information, disciplinary actions taken against employees for conduct inconsistent with Federal antidiscrimination and whistleblower protections laws. Title II empowers the President or the President's designee to issue rules necessary to carry out that Title. The President delegated this rule making authority to the Office of Personnel Management (OPM).

It appears that a number of commenters did not distinguish between EEOC's rule making authority under Title III and OPM's authority under Title II. Thus, for example, commenters urged EEOC to write rules ensuring that there would be management accountability for discriminating against employees, comprehensive training for employees (and managers) concerning the protections afforded them and the obligations imposed upon them under the various Federal statutes, and accurate agency reporting to Congress. As explained, however, these issues do not fall within the rule making authority applicable to Title III of the No FEAR Act and EEOC therefore has no authority to address them.

**Withdrawn Complaints**

In conjunction with comments received on whether amendments to complaints should be tracked, certain commenters suggested that the posted data track the number of complaints that are withdrawn by complainants. EEOC agrees. Therefore, EEOC has added the requirement in a new subsection 1614.704(h) that an agency post the number of complaints that are withdrawn in a given fiscal year. An agency shall track a withdrawn complaint in the same manner it tracks a complaint that is dismissed. That is, in tracking withdrawals, an agency shall not revise posted data pertaining to the number of complaints that have been filed in order to reflect the withdrawal. Rather, the withdrawal, like a dismissal, shall be accounted for in a separate data column.

**Miscellaneous Comments**

A few commenters discussed provisions not included in the No FEAR Act which they believe should have been included; for example, authority for EEOC to sue agencies directly and award punitive damages to Federal employees. Others called for EEOC to promulgate rules beyond the posting requirements set forth in Title III, arguing that to do so would make the posting requirements more effective. Suggestions included: Requiring agencies to post the names of agency employees found to have engaged in prohibited discrimination; referring

such persons to the Office of Special Counsel for possible disciplinary action; adding specific notations to such persons' Official Personnel Files indicating that they had been found to have engaged in prohibited discrimination; requiring agencies to review their posted EEO data in order to determine whether there were problem areas or managers. Other comments addressed the need for sanctions for the posting of false or incomplete data. One commentor wanted EEOC to clarify both the authority of EEOC administrative judges under part 1614 and the hearing process in general. All of these suggestions are beyond the scope of EEOC's authority under the No FEAR Act.

**Matters of General Applicability**

A few commenters wondered how to calculate percentages required by the rule. The percentage components under § 1614.704(i)(2) and (3), (j)(1), and (k)(1) are to be based on the number of final actions rendered in that fiscal year which involve findings of discrimination, and not the total number of final actions rendered in that fiscal year regardless of whether a finding of discrimination is involved. With respect to § 1614.704(j)(2) and (3) and § 1614.704(k)(2) and (3), the percentage figure shall be based on the total number of findings for that particular subcategory.

*Example:* An agency issues 100 final actions in a given fiscal year, 25 of which involve findings of discrimination. Of those 25 cases involving findings of discrimination, 15 were rendered after a hearing and 10 were rendered without a hearing. Of the 15 rendered after a hearing, 10 involve findings of race discrimination and 5 involve findings of sex discrimination. Of the 10 rendered without a hearing, 5 involve findings of race discrimination and 5 involve findings of age discrimination. In posting its percentage data under § 1614.704(i)(2) and (3), the agency will report that 40% (10 of 25) of the final actions involving discrimination were rendered without a hearing and that 60% (15 of 25) were rendered after a hearing. (The agency also will post under § 1614.704(i)(1) that there were 25 final actions involving findings of discrimination). In posting percentage data under § 1614.704(j)(1), the agency will post that 15 and 60% (15 of 25) of the final actions involving a finding of discrimination were based on race discrimination, 5 and 20% (5 of 25) were based on sex discrimination, and 5 and 20% (5 of 25) were based on age discrimination. Under § 1614.704(j)(2), the agency will post that 5 and 33% (5 of 15) of the final actions involving race discrimination were rendered without a hearing and that 5 and 100% (5 of 5) of the final actions involving age discrimination were rendered without a hearing. The agency further will post that 10 and 66% (10 of 15) of the final actions involving race discrimination were rendered after a hearing and that 5 and 100% (5 of 5) of the final actions involving sex discrimination were rendered after a hearing.

EEOC's explanatory comments in the preamble to the interim final rule applicable to those provisions that have not been changed in the final rule should continue to be used as guidance. That language can be found at 69 FR 3483 (2004).

**Regulatory Procedures**

*Executive Order 12866*

Pursuant to Executive Order 12866, EEOC has coordinated this final rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not 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 or local tribal governments or communities.

The posting requirements contained in Title III of The No FEAR Act apply only to Federal executive agencies, the United States Postal Service, and the Postal Rate Commission. All of these agencies, including EEOC, are required by the No FEAR Act to post statistical data on their public Web sites pertaining to EEO complaints filed with them. In addition, EEOC has to post government-wide data pertaining to requests for EEO hearings and appeals of EEO complaints.

Much of the information that will be used as source material to post the statistical data required by Title III already is collected and maintained by the agencies in connection with their pre-existing reporting obligations. All affected agencies currently maintain public Web sites. Consequently, the Congressional Budget Office estimated that the total cost for all agencies to comply with The No FEAR Act's posting requirements will not exceed $5 million annually. House Rept. 107–101 Part 1, June 14, 2001, p 11–12. Also, according to the CBO, it will cost EEOC $500,000 annually to post the additional government-wide data required by § 302. Id. Thus, the total cost of Title III of the No FEAR Act should be less than $5.5 million annually.

The benefits of posting EEO data will flow not just to the Federal agencies but to the public. An agency will be able to compare its EEO program statistics against prior quarters and years to determine if there are trends that need to be addressed or whether progress is being made. An agency can also compare its statistics against those of other agencies. Both types of analyses should be useful to the agency in monitoring its own compliance with 29 CFR part 1614 and ensuring equal opportunity in the agency's employment programs. Public posting will ensure that members of the public will have access to this information and will be able to make independent assessments of agencies' compliance and progress. Agency employees will be able to assess the degree to which their agency provides equal employment opportunity. Likewise, potential job applicants will be able to judge the relative desirability of each agency's working environment. The public display of this information should provide agencies with added incentives to improve their EEO programs and to prevent discrimination proactively so that they can demonstrate that they are true equal employment opportunity employers. Increased monitoring and improved compliance through public posting of EEO statistics should lead to a decline in incidents of employment discrimination, which is the primary goal of the No FEAR Act.

*Paperwork Reduction Act*

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because it does not affect any small business entities. The regulation affects only Federal Government entities. For this reason, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act of 1995*

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 29 CFR Part 1614**

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission.

Dated: July 27, 2006.

**Cari M. Dominguez,**

*Chair.*

■ Accordingly, for the reasons set forth in the preamble, EEOC amends 29 CFR part 1614 as follows:

## PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

■ 1. The authority citation for part 1614 continues to read as follows:

**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1069 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 2. Subpart G is revised to read as follows:

### Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)

Sec.

1614.701 Purpose and scope.
1614.702 Definitions.
1614.703 Manner and format of data.
1614.704 Information to be posted—all Federal agencies.
1614.705 Comparative data—all Federal agencies.
1614.706 Other data.
1614.707 Data to be posted by EEOC.

**Authority:** Sec. 303, Pub. L. 107–174, 116 Stat. 574.

### Subpart G—Procedures Under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act)

#### § 1614.701 Purpose and scope.

This subpart implements Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174. It sets forth the basic responsibilities of Federal agencies and the Commission to post certain information on their public Web sites.

#### § 1614.702 Definitions.

The following definitions apply for purposes of this subpart.

(a) The term *Federal agency* or *agency* means an Executive agency (as defined in 5 U.S.C. 105), the United States Postal Service, and the Postal Rate Commission.

(b) The term *Commission* means the Equal Employment Opportunity Commission and any subdivision thereof authorized to act on its behalf.

(c) The term *investigation* refers to the step of the federal sector EEO process described in 29 CFR 1614.108 and 1614.106(e)(2) and, for purposes of this subpart, it commences when the complaint is filed and ceases when the complainant is given notice under § 1614.108(f) of the right to request a hearing or to receive an immediate final decision without a hearing.

(d) The term *hearing* refers to the step of the federal sector EEO process described in 29 CFR 1614.109 and, for purposes of § 1614.704(l)(2)(ii), it commences on the date the agency is informed by the complainant or EEOC, whichever occurs first, that the complainant has requested a hearing and ends on the date the agency receives from the EEOC notice that the EEOC Administrative Judge (AJ) is returning the case to the agency to take final action. For all other purposes under this subpart, a hearing commences when the AJ receives the complaint file from the agency and ceases when the AJ returns the case to the agency to take final action.

(e) For purposes of § 1614.704(i), (j), and (k) the phrase without a hearing refers to a final action by an agency that is rendered:

(1) When an agency does not receive a reply to a notice issued under § 1614.108(f);

(2) After a complainant requests an immediate final decision;

(3) After a complainant withdraws a request for a hearing; and

(4) After an administrative judge cancels a hearing and remands the matter to the agency.

(f) For purposes of § 1614.704(i), (j), and (k), the term *after a hearing* refers to a final action by an agency that is rendered following a decision by an administrative judge under § 1614.109(f)(3)(iv), (g) or (i).

(g) The phrase *final action by an agency* refers to the step of the federal sector EEO process described in 29 CFR 1614.110 and, for purposes of this subpart, it commences when the agency receives a decision by an Administrative Judge (AJ), receives a request from the complainant for an immediate final decision without a hearing or fails to receive a response to a notice issued under § 1614.108(f) and ceases when the agency issues a final order or final decision on the complaint.

(h) The phrase *final action by an agency involving a finding of discrimination* means:

(1) A final order issued by an agency pursuant to § 1614.110(a) following a finding of discrimination by an administrative judge; and

(2) A final decision issued by an agency pursuant to § 1614.110(b) in which the agency finds discrimination.

(i) The term *appeal* refers to the step of the federal sector EEO process described in 29 CFR 1614.401 and, for purposes of this subpart, it commences when the appeal is received by the Commission and ceases when the appellate decision is issued.

(j) The term *basis of alleged discrimination* refers to the individual's protected status (i.e., race, color, religion, reprisal, sex, national origin, Equal Pay Act, age, or disability). Only those bases protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.,* the Equal Pay Act of 1963, 29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.,* and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.,* are covered by the federal EEO process.

(k) The term *issue of alleged discrimination* means one of the following challenged agency actions affecting a term or condition of employment as listed on EEOC Standard Form 462 (''Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints''): Appointment/hire; assignment of duties; awards; conversion to full time; disciplinary action/demotion; disciplinary action/reprimand; disciplinary action/suspension; disciplinary action/removal; duty hours; evaluation/appraisal; examination/test; harassment/non-sexual; harassment/sexual; medical examination; pay/overtime; promotion/non-selection; reassignment/denied; reassignment/

directed; reasonable accommodation; reinstatement; retirement; termination; terms/conditions of employment; time and attendance; training; and, other.

(l) The term *subordinate component* refers to any organizational sub-unit directly below the agency or department level which has 1,000 or more employees and is required to submit EEOC Form 715–01 to EEOC pursuant to EEOC Equal Employment Opportunity Management Directive 715.

**§ 1614.703 Manner and format of data.**

(a) Agencies shall post their statistical data in the following two formats: Portable Document Format (PDF); and an accessible text format that complies with section 508 of the Rehabilitation Act.

(b) Agencies shall prominently post the date they last updated the statistical information on the Web site location containing the statistical data.

(c) In addition to providing aggregate agency-wide data, an agency shall include separate data for each subordinate component. Such data shall be identified as pertaining to the particular subordinate component.

(d) Data posted under this subpart will be titled ''Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174,'' and a hyperlink to the data, entitled ''No FEAR Act Data'' will be posted on the homepage of an agency's public Web site. In the case of agencies with subordinate components, the data shall be made available by hyperlinks from the homepages of the Web sites (if any exist) of the subordinate components as well as the homepage of the Web site of the parent agency.

(e) Agencies shall post cumulative data pursuant to § 1614.704 for the current fiscal year. Agencies may not post separate quarterly statistics for the current fiscal year.

(f) Data posted pursuant to § 1614.704 by agencies having 100 or more employees, and all subordinate component data posted pursuant to subsection 1614.703(c), shall be presented in the manner and order set forth in the template EEOC has placed for this purpose on its public Web site.

(1) Cumulative quarterly and fiscal year data shall appear in vertical columns. The oldest fiscal year data shall be listed first, reading left to right, with the other fiscal years appearing in the adjacent columns in chronological order. The current cumulative quarterly or year-end data shall appear in the last, or far-right, column.

(2) The categories of data as set forth in § 1614.704(a) through (m) of this subpart shall appear in horizontal rows. When reading from top to bottom, the order of the categories shall be in the same order as those categories appear in § 1614.704(a) through (m).

(3) When posting data pursuant to § 1614.704(d) and (j), bases of discrimination shall be arranged in the order in which they appear in § 1614.702(j). The category ''non-EEO basis'' shall be posted last, after the basis of ''disability.''

(4) When posting data pursuant to § 1614.704(e) and (k), issues of discrimination shall be arranged in the order in which they appear in § 1614.702(k). Only those issues set forth in § 1614.702(k) shall be listed.

(g) Agencies shall ensure that the data they post under this subpart can be readily accessed through one or more commercial search engines.

(h) Within 60 days of the effective date of this rule, an agency shall provide the Commission the Uniform Resource Locator (URL) for the data it posts under this subpart. Thereafter, new or changed URLs shall be provided within 30 days.

(i) Processing times required to be posted under this subpart shall be recorded using number of days.

**§ 1614.704 Information to be posted—all Federal agencies.**

Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, each Federal agency shall post the following current fiscal year statistics on its public Internet Web site regarding EEO complaints filed under 29 CFR part 1614.

(a) The number of complaints filed in such fiscal year.

(b) The number of individuals filing those complaints (including as the agent of a class).

(c) The number of individuals who filed two or more of those complaints.

(d) The number of those complaints, whether initially or through amendment, raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged.

(e) The number of those complaints, whether initially or through amendment, raising each of the various issues of alleged discrimination.

(f) The average length of time it has taken an agency to complete, respectively, investigation and final action by an agency for:

(1) All complaints pending for any length of time during such fiscal year;

(2) All complaints pending for any length of time during such fiscal year in which a hearing was not requested; and

(3) All complaints pending for any length of time during such fiscal year in which a hearing was requested.

(g) The number of complaints dismissed by an agency pursuant to 29 CFR 1614.107(a), and the average length of time such complaints had been pending prior to dismissal.

(h) The number of complaints withdrawn by complainants.

(i)(1) The total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination and, of that number,

(2) The number and percentage that were rendered without a hearing, and

(3) The number and percentage that were rendered after a hearing.

(j) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage of those based on each respective basis,

(2) The number and percentage for each respective basis that were rendered without a hearing, and

(3) The number and percentage for each respective basis that were rendered after a hearing.

(k) Of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination,

(1) The number and percentage for each respective issue,

(2) The number and percentage for each respective issue that were rendered without a hearing, and

(3) The number and percentage for each respective issue that were rendered after a hearing.

(l) Of the total number of complaints pending for any length of time in such fiscal year,

(1) The number that were first filed before the start of the then current fiscal year,

(2) Of those complaints falling within subsection (l)(1),

(i) The number of individuals who filed those complaints, and

(ii) The number that are pending, respectively, at the investigation, hearing, final action by an agency, and appeal step of the process.

(m) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or § 1614.108(e).

**§ 1614.705 Comparative data—all Federal agencies.**

Commencing on January 31, 2004 and no later than January 31 of each year thereafter, each Federal agency shall post year-end data corresponding to that required to be posted by § 1614.704 for each of the five immediately preceding fiscal years (or, if not available for all five fiscal years, for however many of those five fiscal years for which data are available). For each category of data, the agency shall post a separate figure for each fiscal year.

**§ 1614.706 Other data.**

Agencies shall not include or otherwise post with the data required to be posted under § 1614.704 and 1614.705 of this subpart any other data, whether or not EEO related, but may post such other data on another, separate, Web page.

**§ 1614.707 Data to be posted by EEOC.**

(a) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission shall post the following current fiscal year statistics on its public Internet Web site regarding hearings requested under this part 1614.

(1) The number of hearings requested in such fiscal year.

(2) The number of individuals filing those requests.

(3) The number of individuals who filed two or more of those requests.

(4) The number of those hearing requests involving each of the various bases of alleged discrimination.

(5) The number of those hearing requests involving each of the various issues of alleged discrimination.

(6) The average length of time it has taken EEOC to complete the hearing step for all cases pending at the hearing step for any length of time during such fiscal year.

(7)(i) The total number of administrative judge (AJ) decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that were rendered without a hearing, and

(iii) The number and percentage that were rendered after a hearing.

(8) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis,

(ii) The number and percentage for each respective basis that were rendered without a hearing, and

(iii) The number and percentage for each respective basis that were rendered after a hearing.

(9) Of the total number of AJ decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue,

(ii) The number and percentage for each respective issue that were rendered without a hearing, and

(iii) The number and percentage for each respective issue that were rendered after a hearing.

(10) Of the total number of hearing requests pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those hearing requests in earlier fiscal years.

(11) Of the total number of hearing requests pending for any length of time in such fiscal year, the total number in which the Commission failed to complete the hearing step within the time required by § 1614.109(i).

(b) Commencing on January 31, 2004 and thereafter no later than 30 days after the end of each fiscal quarter beginning on or after January 1, 2004, the Commission shall post the following current fiscal year statistics on its public Internet Web site regarding EEO appeals filed under part 1614.

(1) The number of appeals filed in such fiscal year.

(2) The number of individuals filing those appeals (including as the agent of a class).

(3) The number of individuals who filed two or more of those appeals.

(4) The number of those appeals raising each of the various bases of alleged discrimination.

(5) The number of those appeals raising each of the various issues of alleged discrimination.

(6) The average length of time it has taken EEOC to issue appellate decisions for:

(i) All appeals pending for any length of time during such fiscal year;

(ii) All appeals pending for any length of time during such fiscal year in which a hearing was not requested; and

(iii) All appeals pending for any length of time during such fiscal year in which a hearing was requested.

(7)(i) The total number of appellate decisions rendered in such fiscal year involving a finding of discrimination and, of that number,

(ii) The number and percentage that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage that involved a final action by an agency after a hearing.

(8) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage of those based on each respective basis of discrimination,

(ii) The number and percentage for each respective basis that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective basis that involved a final action by an agency rendered after a hearing.

(9) Of the total number of appellate decisions rendered in such fiscal year involving a finding of discrimination,

(i) The number and percentage for each respective issue of discrimination,

(ii) The number and percentage for each respective issue that involved a final action by an agency rendered without a hearing, and

(iii) The number and percentage for each respective issue that involved a final action by an agency rendered after a hearing.

(10) Of the total number of appeals pending for any length of time in such fiscal year,

(i) The number that were first filed before the start of the then current fiscal year, and

(ii) The number of individuals who filed those appeals in earlier fiscal years.

[FR Doc. E6–12432 Filed 8–1–06; 8:45 am]

**BILLING CODE 6570–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 362

**[DoD Directive 5105.19]**

### Defense Information Systems Agency (DISA)

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document removes part 362, ''Defense Information Systems Agency (DISA)'' presently in Title 32 of the Code of Federal Regulations. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

**EFFECTIVE DATE:** August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** L.M. Bynum (703) 696–4970.

**SUPPLEMENTARY INFORMATION:** This part 362 is removed to as a part of a DoD exercise to remove organizational charters from the CFR because they have

no impact on the public. The revised DoD Directive 5105.19 is available at *http://www.dtic.mil/whs/directives/corres/html/510519.htm*.

**List of Subjects in 32 CFR Part 362**

Organizations.

**PART 362—[REMOVED]**

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 362 is removed.

Dated: July 27, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–6637 Filed 8–1–06; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD05–06–82]**

**RIN 1625–AA–09**

## Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Virginia

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Berkley Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River in Norfolk, Virginia to facilitate repair and replacement of electrical and mechanical equipment. This deviation allows vessel openings of the drawbridge upon three hours advance notice each day between 9 a.m. to 3 p.m., beginning Monday, July 31, 2006 until and including Friday, August 4, 2006.

**DATES:** This deviation is effective from 9 a.m. on July 31, 2006, to 3 p.m. on August 4, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

**SUPPLEMENTARY INFORMATION:** The Berkley Bridge, a lift-type drawbridge, has a vertical clearance in the closed position for vessels of 48 feet above mean high water. The bridge owner, the Virginia Department of Transportation, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.1007(b) and (c), to support electrical and mechanical repairs of the draw span.

To facilitate the repairs, the drawbridge will provide vessel openings upon three hours advance notice each day between 9 a.m. to 3 p.m. beginning on Monday, July 31, 2006 until and including Friday, August 4, 2006. At all other times, the drawbridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.1007(b) and (c).

The Coast Guard has informed the known users of the waterway by telephone so that they can arrange their transits to minimize any impact caused by the temporary deviation. For the three-hour advance notification, mariners should contact the bridge operator on channel 13 VHF or by calling (757) 247–2133 or (757) 494–2400.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2006.

**Waverly W. Gregory, Jr.**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

[FR Doc. E6–12403 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD01–06–100]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Charles River, Boston, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the drawbridge operation regulations that govern the Department of Conservation and Recreation (DCR), Craigie Bridge, formerly, the Metropolitan District Commission, Craigie Bridge, across the Charles River, mile 1.0, at Boston, Massachusetts. This temporary rule in effect from July 24, 2006 through September 30, 2006, requires the Craigie Bridge to open on signal on the half-hour only between 12 p.m. and 8 p.m. on Saturday and Sunday and it also extends the rush hour closed periods normally in effect Monday through Friday, by one-hour. This temporary final rule is necessary to enhance public safety by alleviating vehicular traffic delays caused by the Central Artery Connecter tunnel closure.

**DATES:** This rule is effective from July 24, 2006 through September 30, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–06–100) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The closure of a major downtown Boston roadway, the Central Artery Connector, due to a structural failure, has resulted in land traffic being detoured over many local roadways resulting in significant vehicular traffic delays and traffic gridlock.

The resulting traffic congestion has created a public safety issue. Emergency land traffic, including ambulances, fire fighting equipment, and police vehicles, may be unable to safely, and in a timely manner, travel throughout the downtown Boston area.

Reducing the times at which the bridge is required to open on weekends and extending the commuter rush hour closures by one hour is expected to help alleviate the traffic delays and reduce gridlock in the vicinity of the bridge and downtown Boston.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the reasons outlined above.

**Background and Purpose**

The Department of Conservation and Recreation, Craigie Bridge, formerly the Metropolitan District Commission, Craigie Bridge, has a vertical clearance in the closed position of 12 feet at normal pool elevation.

The existing drawbridge operation regulations listed at 33 CFR § 117.591(e), require the bridge to open on signal; except that, from 6:15 a.m. to

9:10 a.m., and 3:15 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels. The bridge shall open as soon as possible for public vessels of the United States, state or local vessels used for public safety, and vessels in distress.

Pursuant to 33 CFR 117.37, the bridge owner, the Department of Conservation and Recreation, and the Massachusetts State Police, requested a temporary change to the drawbridge operation regulations for the Craigie Bridge, in the interest of public safety. The closure of a major downtown roadway, the Central Artery Connecter, due to a structural failure, has resulted in vehicular traffic being re-routed over local roads resulting in significant traffic delays and gridlock in downtown Boston on weekdays during the commuter rush hours, 6 a.m. to 10 a.m. and 3 p.m. to 7 p.m., and on weekends after 12 p.m. Emergency vehicles and equipment could be delayed in responding to emergency situations in a safe and timely manner as a result of these traffic delays.

The Charles River is predominantly a recreational waterway. The Craigie Bridge normally opens between 25 and 30 times on Saturday and Sunday between 8 a.m. and 8 p.m. during the boating season. Reducing the number of bridge openings after 12 p.m. on weekends and extending the commuter rush hour closure periods by one hour on weekdays when vehicular traffic is increased should help alleviate the traffic delays and enhance public safety.

As a result of the above information, the Coast Guard is temporarily changing the drawbridge operation regulations that govern the operation of the Craigie Bridge.

Under this temporary final rule, the Department of Recreation and Conservation Craigie Bridge across the Charles River, mile 1.0, at Boston, shall open on signal; except that, on Saturday and Sunday, from 12 p.m. to 8 p.m., the draw shall open on signal, on the half-hour only, except for the passage of emergency vessels.

The morning and afternoon commuter rush hour bridge closure periods Monday through Friday will be extended. As a result, the bridge may remain closed from 6 a.m. to 10 a.m. and from 3 p.m. to 7 p.m., except for the passage of emergency vessels.

**Discussion of Rule**

The Coast Guard is temporarily changing the drawbridge operation regulations for the Department of Conservation and Recreation Craigie Bridge across the charles River, mile 1.0, at Boston, to operate as follows: the draw shall open on signal; except that, between 12 p.m. and 8 p.m. on Saturday and Sunday the draw shall open on signal, on the half-hour only, and from 6 a.m. to 10 a.m. and 3 p.m. to 7 p.m., Monday through Friday the draw need not open for the passage of vessel traffic, except as stated in paragraph (a)(1) of this section.

The Coast Guard believes that this temporary change will help reduce the vehicular traffic delays while continuing to meet the reasonable needs of navigation.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic. The temporary limitation of the bridge opening only on the half-hour between 12 p.m. and 8 p.m. on Saturday and Sunday and the one-hour extension of the commuter rush hour closures Monday through Friday is necessary for public safety and should be sufficient for the present needs of navigation.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The Charles River is navigated predominantly by recreational vessels. We believe that the recreational vessels have the schedule flexibility to plan their bridge transits in accordance with the temporary bridge opening schedule and that they will not be adversely affected since the bridge will continue to open for all vessel traffic. The temporary limitation of the bridge opening only on the half-hour between 12 p.m. and 8 p.m. on Saturday and Sunday and the extension of the weekday commuter rush hour closures is necessary for public safety, and should be sufficient for the present needs of navigation.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) is applied to this rule because it relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e), of the instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From July 24, 2006 through September 30, 2006, § 117.591 is amended by suspending paragraph (e) and adding a temporary paragraph (g), to read as follows:

**§ 117.591 Charles River.**

* * * * *

(g) The draw of the Department of Conservation and Recreation, (Craigie Bridge), mile 1.0, at Boston, shall operate as follows:

(1) The draw shall open on signal; except that, from 12 p.m. to 8 p.m. on Saturday and Sunday, the draw shall open on signal on the half-hour only, except as stated in paragraph (a)(1) of this section.

(2) Monday through Friday from 6 a.m. to 10 a.m. and 3 p.m. to 7 p.m., the draw need not open for the passage of vessel traffic, except as stated in paragraph (a)(1) of this section.

Dated: July 24, 2006.

**Timothy S. Sullivan,**

*Rear Admiral, U.S. Coast Guard,Commander, First Coast Guard District.*

[FR Doc. E6–12401 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD01–06–098]**

**RIN 1625–AA00**

## Safety Zone; Vermont Air National Guard 60th Anniversary Air Show, Burlington Bay, Burlington, VT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Vermont Air National Guard 60th Anniversary Air Show on August 18 and 19, 2006 in Burlington, Vermont. This zone will temporarily close all waters in Burlington Bay from Lone Rock Point 44°29′43″ N 073°14′56″ W SE to Oakledge Park 44°27′15″ N 073°14′52″ W, thence from the Burlington South break wall light 44°28′12″ N 073°13′32″ W extending due east to the shore, thence from the Burlington north break wall 44°28′50″ N 073°13′47″ W and extending due east to the shore. The safety zone, which temporarily prohibits entry into or movement within this portion of Burlington Bay, is necessary to safeguard the public from possible hazards associated with an air show. Entry into this zone by any vessel is prohibited unless specifically authorized by the Captain of the Port, Northern New England or his designated representative.

**DATES:** This rule is effective from 10 a.m. until 4 p.m. on August 18, 2006 and from 8 a.m. until 6 p.m. EDT on August 19, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD01–06–098] and are available for inspection or copying at U.S. Coast Guard Sector Northern New England, 259 High Street, South Portland, ME 04106 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Stephanie Forbes at Sector Northern New England, (207) 767–0313 or LTJG Jarrett Bleacher at (207) 742–5421.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard was not presented with the logistical information for the Vermont Air National Guard 60th Anniversary Air Show in sufficient time to draft and publish an NPRM. Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is needed to protect the maritime public from the potential hazards associated with high-speed, high-performance, low-flying aircraft conducting acrobatic demonstrations above the waters of Burlington Bay.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds, for the same reasons, that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

The Vermont National Guard is holding a 60th Anniversary Air Show over the waters of Burlington Bay. This rule establishes a safety zone temporarily closing all waters in Burlington Bay from Lone Rock Point *44°29′43″ N 073°14′56″ W SE to Oakledge Park 44°27′15″ N 073°14′52″ W, thence from the Burlington South break wall light 44°28′12″ N 073°13′32″ W extending due east to the shore, thence from the Burlington north break wall 44°28′50″ N 073°13′47″ W* and extending due east to the shore. This zone is necessary to protect the life and property of the maritime public from the potential dangers posed by this event. It will protect the public by prohibiting entry into or movement within the proscribed portion of Burlington Bay during the Vermont National Guard 60th Anniversary Air Show.

Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via marine safety information broadcasts and Local Notice to Mariners.

**Discussion of Rule**

This rule is effective from 10 a.m. until 4 p.m. on August 18, 2006 and from 8 a.m. until 6 p.m. on August 19, 2006. This safety zone is needed to safeguard mariners from the hazards associated with low-flying, high-speed, and high-performance acrobatic aircraft performing above the designated waters in Burlington Bay. During the effective period of the safety zone, vessel traffic will be restricted in a portion of Burlington Bay. Entry into this zone by any vessel is prohibited unless specifically authorized by the Captain of the Port, Northern New England or his designated representative.

The Captain of the Port anticipates negligible negative impact on vessel traffic from this temporary safety zone as it will be in effect for limited hours during only one weekend. Additionally, extensive advanced notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, local port safety committee meetings, area newspapers, and electronic Marine Safety Information Bulletins. These advisories will afford large commercial traffic substantial advance notice to schedule around the event. It has been determined that the enhanced safety to life and property provided by this rule greatly outweighs any potential negative impacts. Public notifications will be made during the entire effective period of this safety zone via Local Notice to Mariners and marine information broadcasts.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following reasons: the duration of the safety zone is for a limited number of hours and during the span of only one weekend. Vessels will be permitted to transit and navigate in waters adjacent to this safety zone, minimizing any adverse impact. Additionally, this rule will be entered into the Local Notice to Mariners, and extensive maritime advisories will be broadcast.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit in the vicinity of Burlington, Vermont. The safety zone will not have a significant impact on a substantial number of small entities as the duration of the safety zone is for a limited number of hours and during the span of only one weekend. Vessels will be permitted to transit and navigate in waters adjacent to this safety zone, minimizing any adverse impact.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call LTJG Stephanie Forbes at (207) 767–0313 or LTJG Jarrett Bleacher at (207) 742–5421, Sector Northern New England, Waterways Management Division.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–098 to read as follows:

**§ 165.T01–098 Safety Zone: Vermont Air National Guard 60th Anniversary Air Show, Burlington Bay, Burlington, VT.**

(a) *Location.* The following area is a safety zone: all waters in Burlington Bay from Lone Rock Point 44°29′43″ N 073°14′56″ W SE to Oakledge Park 44°27′15″ N 073°14′52″ W, thence from the Burlington South break wall light 44°28′12″ N 073°13′32″ W extending due east to the shore, thence from the Burlington north break wall 44°28′50″ N 073°13′47″ W and extending due east to the shore. All vessels are restricted from entering this area.

(b) *Effective Date.* This section is effective from 10 a.m. until 4 p.m. on August 18, 2006 and from 8 a.m. until 6 p.m. on August 19, 2006.

(c) *Definitions.* As used in this section *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(d) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Northern New England or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

Dated: July 18, 2006.

**Stephen P. Garrity,**

*Captain, U.S. Coast Guard,Captain of the Port, Northern New England.*

[FR Doc. E6–12400 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2006–0232; FRL–8080–1]**

## Inert Ingredient; Revocation of the Wheat Bran Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), the existing exemption from the requirement of a tolerance for residues of the inert ingredient ''wheat bran'' under 40 CFR 180.910. This regulatory action contributes toward the Agency's tolerance reassessment requirements under FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. This regulatory action counts as a tolerance reassessment toward the August 2006 review deadline.

**DATES:** This rule is effective August 2, 2006. Objections and requests for hearings must be received on or before October 2, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0232. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 ; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0232 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 2, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0232, 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 Bldg.), 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 Facility telephone number is (703) 305–5805.

### II. Background and Statutory Findings

*A. What Action is the Agency Taking?*

In the **Federal Register** of April 19, 2006 (71 FR 20045) (FRL–8065–7), EPA issued a proposed rule to revoke the exemption from the requirement of a tolerance for ''wheat bran'' under 40 CFR 180.910. As discussed in the proposed rule, wheat bran has been identified as an allergen-containing food commodity. The proposed rule provided a 60–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards. No comments were received on the proposed rule. This final rule completes EPA's revocation of the ''wheat bran'' tolerance exemption under 40 CFR 180.910 as proposed in the **Federal Register** of April 19, 2006 (71 FR 20045).

*B. What is the Agency's Authority for Taking this Action?*

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

*C. When Do These Actions Become Effective?*

This action becomes effective on August 2, 2006. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemical subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of the pesticide chemical in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

*D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006, to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document revokes one inert ingredient tolerance exemption which is counted as a tolerance reassessment toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

**III. Statutory and Executive Order Reviews**

In this final rule, EPA is revoking a specific tolerance exemption established under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this final rule). Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change the EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct

effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

### IV. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: July 24, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

### § 180.910 [Amended]

■ 2. In § 180.910, the table is amended by removing the entry for ''Wheat bran.''

[FR Doc. E6–12345 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2005–0245; FRL–8079–2]**

## Fenhexamid; Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fenhexamid in or on nonbell pepper, pomegranate, and cilantro leaves. Interregional Research Project No.4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective August 2, 2006. Objections and requests for hearings must be received on or before October 2, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0245. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0245 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 2, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0245, 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.

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## II. Background and Statutory Findings

In the **Federal Register** of November 30, 2005 (70 FR 71838) (FRL–7735–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 4E6859 and 4E6860) by Interregional Research Project No. 4 (IR-4), Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.553 be amended by establishing tolerances for residues of the fungicide fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide in or on cilantro, leaves at 30.0 parts per million (ppm) (4E6859); pepper, nonbell at 0.02 ppm (4E6860) and pomegranate at 3.0 ppm (4E6859). That notice included a summary of the petition prepared by Arvesta Corporation, the registrant. There were no comments received in response to the notice of filing. Petition 4E6859 was subsequently amended to lower the residue level for pomegranate to 2.0 ppm.

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

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

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of fenhexamid on cilantro, leaves at 30.0 ppm; pepper, nonbell at 0.02 ppm; and pomegranate at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by fenhexamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies in the **Federal Register** of April 13, 2000 (65 FR 19842) (FRL–6553–7) **http://www.epa.gov/fedrgstr/EPA-PEST/2000/April/Day-13/p9144.htm.*

### *B. Toxicological Endpoints*

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

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

A summary of the toxicological endpoints for fenhexamid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 26, 2003 (68 FR 55513) (FRL–7326–7).

### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.553) for the residues of fenhexamid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid in food as follows:

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: one hundred percent of proposed and registered crops are treated with fenhexamid, default processing factors, average (chronic) concentration estimates for drinking water and tolerance-level residues for all commodities.

iii. *Cancer*. Fenhexamid is classified as ''not likely'' to be a human carcinogen. Therefore, a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenhexamid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenhexamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm* .

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of fenhexamid for acute exposures are estimated to be 29 parts per billion (ppb) for surface water and 0.0007 ppb for groundwater. The EECs for chronic exposures are estimated to be 1.1 ppb for surface water and 0.0007 ppb for groundwater. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™). For chronic dietary risk assessment, the annual average concentration of 1.1 ppb was used to access the contribution to drinking water

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenhexamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fenhexamid and any other substances and fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity*. In the rat and the rabbit developmental toxicity studies, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to fenhexamid was observed. In the rat reproduction study, qualitative susceptibility was evidenced as significantly decreased pup body weights in both generations during the lactation period (on lactation days 7, 14, and 21 in the $F_2$ generation and lactation days 14 and 21 in the $F_1$ generation offspring) in the presence of lesser maternal toxicity (alterations in clinical chemistry parameters and decreased organ weights without collaborative histopathology). Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for fenhexamid, the degree of concern for the effects observed in this study was characterized as low, noting that there is a clear NOAEL and well-characterized dose response for the offspring effects observed and that these effects occurred in the presence of parental toxicity. No residual uncertainties were identified. The NOAEL of 17 mg/kg/day from the chronic dog study used to establish the chronic Reference Dose (cRfD) for the General Population (no aRfD was established for any population subgroup) is lower than the NOAEL of 38.2 mg/kg/day in the reproduction study in which the offspring effects of concern were observed (LOAEL = 406 mg/kg/day).

3. *Conclusion*. There is a complete toxicity data base for fenhexamid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X Safety Factor to protect infants and children should be reduced to 1X for the following reasons:

- There are no residual uncertainties for pre and/or post natal toxicities via the oral route since the doses selected for concerns for the developmental and offspring toxicities seen in the above mentioned studies.
- There are no residual uncertainties for pre and/or post natal toxicities via the dermal route since the dose/endpoint/study/species of concern was used for dermal-risk assessment.
- The toxicology data base is complete.
- Developmental neurotoxicity studies are not required for fenhexamid based on the following weight-of-the-evidence considerations:

i. Lack of evidence of abnormalities in the development of the fetal nervous system in the pre/post natal studies.

ii. Neither brain weight nor histopathological examination of the nervous system was affected in the subchronic and chronic studies.

iii. Decreased body temperatures observed in male rats in the acute neurotoxicity study were not considered to be toxicologically significant.

• The dietary (food) exposure assessment utilizes existing and proposed tolerance level residues and assumes 100% of crops treated with fenhexamid. The assessment is based on reliable data and is not expected to underestimate exposure/risk.

• Conservative assumptions are used in the drinking water models. The drinking water exposure assessment is not expected to underestimate exposure/risk.

• Fenhexamid is not registered for use sites that would result in residential exposure.

*E. Aggregate Risks and Determination of Safety*

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf*.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and groundwater EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk*. An acute risk assessment was not performed. No toxicological endpoint attributable to a single (acute) dietary exposure was identified. Therefore, acute risk from exposure to fenhexamid is not expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenhexamid from food and water will utilize 11% of the cPAD for the U.S. population, 21% of the cPAD for all infants less than 1 year old, and 28% of the cPAD for children 1-2 years old, the subpopulation at greatest exposure. There are no residential uses for fenhexamid. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD

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

4. *Aggregate cancer risk for U.S. population*. The Agency has classified fenhexamid as a ''not likely'' human carcinogen based on lack of evidence of carcinogenicity in male and female rats as well as in male and female mice, and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, fenhexamid is not expected to pose a cancer risk.

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology Bayer AG Method 00362 (HPLC - ECD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

*B. International Residue Limits*

Fenhexamid *per se* is the residue to be regulated in pomegranate, cilantro or non-bell pepper. There are no Canadian, Mexican, or Codex MRLs for fenhexamid ''for these crops'' , therefore, there are no issues for international harmonization.

## V. Conclusion

Therefore, the tolerance is established for residues of fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide, in or on cilantro, leaves at 30.0 ppm; pepper, nonbell at 0.02 ppm; and pomegranate at 2.0.

## VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input

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

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: July 21, 2006.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—AMENDED

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

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

■ 2. Section 180.553 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

**§ 180.553 Fenhexamid; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Cilantro, leaves | 30.0 |
| * * * | * * |
| Pepper, nonbell | 0.02 |
| * * * | * * |
| Pomegranate | 2.0 |
| * * * | * * |

[FR Doc. E6–12348 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2006–0307; FRL–8079–9]**

### Inert Ingredients; Revocation of Two Tolerance Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking two exemptions from the requirement of a tolerance that are associated with two inert ingredients (ethylene glycol monomethyl ether and methylene blue) because these substances are no longer contained in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The two tolerance exemptions are considered ''reassessed'' for purposes of FFDCA's section 408(q) and count as a tolerance reassessment toward the August 2006 review deadline.

**DATES:** This rule is effective August 2, 2006. Objections and requests for hearings must be received on or before October 2, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0307. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 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 Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at*http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0307 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 2, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0307, 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 Bldg.), 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 Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

*A. What Action is the Agency Taking?*

In the **Federal Register** of May 3, 2006 (71 FR 26001) (FRL–8068–3), EPA issued a proposed rule to revoke two exemptions from the requirement of a tolerance that are associated with two inert ingredients because those substances are no longer contained in pesticide products. The proposed rule provided a 60–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards.

In this final rule, EPA is revoking two exemptions from the requirement of a tolerance that are associated with two inert ingredients because these specific tolerance exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticide chemicals in or on domestically treated commodities or commodities treated outside but imported into the United States.

EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances and tolerance exemptions on the grounds discussed in Unit II. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

No comments were received on the proposed rule. Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the two exemptions from the requirement of a tolerance identified in the **Federal Register** Notice of May 3, 2006 (71 FR 26001).

*B. What is the Agency's Authority for Taking this Action?*

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as

''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

*C. When Do These Actions Become Effective?*

These actions become effective on August 2, 2006. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

*D. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required by August 2006, to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document revokes two inert ingredient tolerance exemptions which are counted as tolerance reassessments toward the August 2006 review deadline under FFDCA section 408(q), as amended by FQPA in 1996.

## III. Statutory and Executive Order Reviews

In this final rule, EPA is revoking specific tolerance exemptions established under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change the EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

## IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: July 24, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

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

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

**§ 180.920 [Amended]**

■ 2. In § 180.920, the table is amended by removing the entries for ''Ethylene glycol monomethyl ether'' and ''Methylene blue.''

[FR Doc. E6–12344 Filed 8–1–06; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 54 and 64

**[WC Docket No. 05–68; FCC 06–79]**

## Regulation of Prepaid Calling Card Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) takes steps necessary to protect the federal universal service program and promote stability in the market for prepaid calling cards. In particular, the Commission will treat certain prepaid calling card service providers as telecommunications service providers. As such, these providers must pay intrastate access charges for interexchange calls that originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states. They also must contribute to the federal Universal Service Fund (USF) based on their interstate revenues, subject to the limitations set forth below. The Commission also addresses a petition for interim relief filed by AT&T and adopts interim rules to facilitate compliance with the universal service and access charge rules. Specifically, on an interim and prospective basis, the Commission requires all prepaid calling card providers to comply with certain reporting and certification requirements.

**DATES:** Effective October 31, 2006 except for §§ 64.5001(a), (b), and (c) which contain information collection requirements that have not yet been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Lynne Hewitt Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Declaratory Ruling and Report and Order in WC Docket No. 05–68, adopted on June 1, 2006, and released on June 30, 2006. The complete text of this Declaratory Ruling and Report and Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

**Synopsis of Declaratory Ruling and Report and Order**

1. On May 15, 2003, AT&T filed a petition for declaratory ruling that intrastate access charges did not apply to calls made using its ''enhanced'' prepaid calling cards when the calling card platform is located outside the state in which either the calling or the called party is located. On November 22, 2004, AT&T submitted an *ex parte* letter requesting a declaratory ruling on two additional types of ''enhanced'' prepaid calling card offerings: one card that offers the caller a menu of options to access non-call-related information, and a second card that utilizes Internet Protocol (IP) technology, accessed by 8YY dialing, to transport a portion of the calling card call.

2. On February 16, 2005, the Commission denied AT&T's May 2003 Petition. *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services,* Order and Notice of Proposed Rulemaking, 70 FR 12828, March 16, 2005 (*Calling Card Order & NPRM*). The Commission found that the service described in the original petition was a jurisdictionally-mixed telecommunications service and that intrastate access charges apply when a call originates and terminates in the same state. The Commission initiated a Notice of Proposed Rulemaking (NPRM) to address additional types of ''enhanced'' prepaid calling cards, including those described in AT&T's November 2004 letter. On May 3, 2005, AT&T filed a petition seeking the adoption of interim rules pending a final decision by the Commission in this docket. AT&T's Emergency Petition seeks interim rules imposing federal universal service funding obligations on all prepaid calling card services regardless of whether the Commission ultimately decides they are telecommunications services or information services.

**Declaratory Ruling**

3. In this *Order*, the Commission addresses the two prepaid calling card variants described in the NPRM portion of the *Calling Card Order and NPRM:* (1) Menu-driven prepaid calling cards; and (2) prepaid calling cards that utilize IP transport to deliver all or a portion of

the call. As the Commission explains, it finds that both types of prepaid calling cards are telecommunications services and that their providers are subject to regulation as telecommunications carriers. In conjunction with the Commission's prior rulings regarding basic prepaid calling cards and prepaid cards with advertising, all prepaid calling card providers will now be treated as telecommunications service providers. In the future, if prepaid calling card providers introduce new and different card types that they believe should be classified as information services, they may seek a declaratory ruling, a waiver, or other relief from the requirements that the Commission adopts in this*Order.*

**Menu-Driven Prepaid Calling Cards**

4. In its comments AT&T described its ''newly augmented'' prepaid calling card service accessed via toll-free, 8YY, dialing. Upon dialing the 8YY number, the cardholder is presented with the option to make a telephone call or to access several types of information, such as additional information about the card distributor, sports, weather, or restaurant or entertainment information. Other entities offer similar services to consumers.

5. ''Telecommunications'' is defined as the ''transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' 47 U.S.C. 153(43). Building on the definition of ''telecommunications,'' the Communications Act defines ''telecommunications service'' as ''the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used.'' 47 U.S.C. 153(46). Thus, a ''telecommunications service'' involves more than the mere transmission of information; it requires the ''offering'' of pure transmission capability ''for a fee directly to the public.''

6. Although it may be difficult at times to determine whether a service bundle is ''sufficiently integrated'' to merit treatment as a single service, that is not the case here. There simply is no functional integration between the information service features and the use of the telephone calling capability with menu-driven prepaid calling cards. The menu is a mechanism by which the customer can access the separate capabilities that are packaged together in a single prepaid calling card. The customer may use only one capability at a time and the use of the telecommunications transmission capability is completely independent of the various other capabilities that the card makes available. But even if those additional capabilities are classified as an information service, the packaging of these multiple services does not by itself transform the telecommunications component of these cards into an information service.

7. The Commission's finding here is consistent with the Commission's conclusions in the *Calling Card Order and NPRM.* Just as the Commission found in that order that the addition of an advertising message does not convert a telecommunications service into an information service, the Commission now finds that the addition of an option to access other types of information does not convert the telecommunications service offered by these prepaid calling cards into an information service for regulatory purposes, even if standing alone the information processing capability would meet the statutory definition of an information service. In short, these menu-driven calling cards offer customers a telecommunications service that enables them to make telephone calls, and the ability to obtain sports scores, stock quotes, and other information through the same card does not alter that conclusion.

**Prepaid Calling Cards That Utilize IP Technology**

8. In the *IP-in-the-Middle Order,* the Commission addressed AT&T's use of IP technology to transport interexchange telephone calls dialed on a 1+ basis. See *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*). The Commission found that ''an interexchange service that: (1) Uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology'' is a telecommunications service. The Commission limited its ruling in the *IP-in-the-Middle Order* to calls that meet all of the above criteria and are placed using 1+ dialing.

9. Other than the use of 8YY dialing instead of 1+ dialing, prepaid calling cards that use IP transport appear to be identical to the services addressed by the Commission in the *IP-in-the-Middle Order.* The Commission sees no reason why the use of a different dialing pattern to make calls, without more, should result in a different regulatory classification. These cards are used to originate calls on the circuit-switched network using standard customer premises equipment, factors that the Commission previously has used to distinguish telecommunications services from information services. Consequently, the Commission finds that the use of IP transport in the provision of a prepaid calling card service does not alone convert that service from a telecommunications service to an information service.

**Report and Order**

10. As a result of the Commission's finding that providers of the two types of prepaid calling cards described in the previous section offer telecommunications services, these providers are now subject to all of the applicable requirements of the Communications Act and the Commission's rules, including requirements to contribute to the federal USF and to pay access charges. In this section, the Commission sets forth some additional requirements that will apply, at least on an interim basis, to all prepaid calling card providers.

**USF Contributions**

11. As noted above, all prepaid calling card providers must contribute to the Federal USF based on interstate and international telecommunications revenues. 47 U.S.C. 254 and 47 CFR 54.706. The Commission has established two safe harbors for use by carriers that offer retail packages that bundle interstate telecommunications services with other services (*e.g.*, basic phone service and voicemail). A carrier may elect to treat all bundled revenues as telecommunications revenues or it may report revenues from the bundled offering based on the unbundled service offering prices, with no discount allocated to the telecommunications service. Prepaid calling card providers may avail themselves of these safe harbors; should they choose to forego these safe harbors, they must be prepared to defend the allocation method they use in an audit or enforcement context.

12. Based on the record in this proceeding, the Commission finds that an exemption from the contribution requirement for calling cards sold by, to, or pursuant to contract with DoD or a DoD entity will serve the public interest. Accordingly, the Commission forbears from applying section 254(d) to the extent necessary to implement the exemption from USF contribution

obligations for prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity, on an interim basis while the Commission decides other USF contribution issues in its *Contribution Methodology* proceeding. The Commission finds that this exemption easily meets the three-pronged forbearance standard contained in section 10(a). 47 U.S.C. 160(a).

**Access Charges**

13. As a result of this *Order,* providers of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties. 47 CFR 69.1 *et seq.* As noted above, the Commission previously has found that these same access charge obligations apply to basic prepaid calling cards and prepaid calling cards with unsolicited advertising. As with other services that require the caller to dial an access number, the assessment of interstate and intrastate access charges based on the location of the called and calling parties can be complicated with respect to prepaid calling card traffic because the caller initially dials the 8YY number associated with the calling card platform and only later dials the number of the called party.

14. The Commission believes that these complications can be addressed through certification and reporting requirements that compel the prepaid calling card provider to share the necessary information with the carriers that it uses to transport traffic to and from the platform. The Commission agrees with AT&T that such requirements will promote transparency in the prepaid calling card market and that, absent such requirements, calling card providers and their underlying carriers would have the incentive and the ability to avoid intrastate access charges. As with any other service subject to the Commission's rules, if prepaid calling card providers do not comply with these rules they will be subject to the Commission's enforcement authority, including complaints and forfeitures. 47 U.S.C. 208, 501.

**Reporting to Other Carriers**

15. Prepaid calling card providers are subject to the Commission's rules on the passing of CPN. 47 CFR 64.1601. Under these rules, carriers that use SS7 are required to transmit the CPN associated with an interstate call to interconnecting carriers. In the context of prepaid calling card calls, the Commission interprets this to mean that carriers must pass the CPN of the calling party (*i.e.*, the number associated with the telephone used by the cardholder) and not replace that number with the number associated with the platform.

16. For similar reasons, the Commission prohibits carriers that serve prepaid calling card providers from passing the telephone number associated with the platform in the charge number (CN) parameter of the SS7 stream. The Commission concludes that carriers that serve prepaid calling card providers may not pass information regarding the calling card platform in the CN parameters in the SS7 stream. This approach properly balances the need for accurate intercarrier billing records with the need of some carriers to use CN for their own retail billing purposes.

17. The Commission also requires prepaid calling card providers to report percentage of interstate use (PIU) factors to those carriers from which they purchase transport services. Specifically, a prepaid calling card provider must report prepaid calling card PIU factors, and call volumes on which these factors were calculated, based on not less than a one-day representative sample. These factors must be computed separately for originating and terminating traffic on a state-specific basis. This information must be provided to the transport provider no later than the 45th day of each calendar quarter. The transport provider may use the reported PIU in calculating any PIU factors it reports to LECs, and it may disclose the reported PIU upon request of such LECs.

18. If the prepaid calling card provider fails to provide the appropriate PIU information to the transport provider in a timely manner, the transport provider may treat the prepaid calling card provider's traffic as subject to a 50 percent default PIU. The transport provider may notify any originating or terminating LEC that it has applied the default PIU to the prepaid calling card provider's traffic for that reporting period. A transport provider also may audit the PIU reports it receives from a calling card provider if it has a reasonable basis to believe that such reports contain inaccurate or misleading data. The Commission finds that the use of a default PIU and the ability to audit are reasonable means by which to protect underlying transport providers (who themselves may be subject to comparable requirements under LEC access tariffs) and encourage the timely submission of accurate information by prepaid calling card providers. The platform number should be considered the called party number if the caller does not attempt to make a call to a third party.

**Certification to the Commission**

19. The Commission believes that the exchange of information among carriers, as described above, should be sufficient to resolve most issues related to the assessment of access charges with respect to prepaid calling card traffic. To reduce further the incentive for carriers to report false or misleading information, however, the Commission also requires prepaid calling card providers to file certifications with the Commission. On a quarterly basis, every prepaid calling card provider must submit a certification, signed by an officer of the company under penalty of perjury, stating that it is in compliance with the reporting requirements described above. The certification also should include the percentage of interstate, intrastate, and international calling card minutes for that reporting period.

20. Each prepaid calling card provider also must certify the percentages of total prepaid calling card service revenues (excluding revenue that is exempt under the military exemption adopted above) that are interstate and international and therefore subject to federal universal service assessments for the reporting period. The certification the Commission requires in this *Order* is not a replacement for the Form 499—Telecommunications Reporting Worksheet. As such, prepaid calling card providers are responsible for filing both the certification required in this *Order* and a Form 499. Finally, the certification must include a statement that the company is making the required contribution based on the reported information.

21. Certifications will be due on a quarterly basis and may be filed in WC Docket No. 05–68 using the Commission's Electronic Comment Filing System. The first provider certifications are due the last day of the first full calendar quarter after OMB approval of this requirement.

**Effect of This Order**

22. In contrast to the new reporting and certification rules the Commission adopts in this *Order,* which it will apply to all prepaid calling card providers on a prospective basis, the Commission's decision to classify prepaid calling cards that use IP transport and menu-driven prepaid calling cards as telecommunications services is a declaratory ruling, which is a form of adjudication. 47 CFR 1.2.

23. Adjudicatory decisions typically apply on a retroactive basis, and the

Commission finds that such retroactivity is appropriate for cards that use IP transport. The Commission reaches a different conclusion, however, with respect to menu-driven prepaid calling card services. Given the lack of clarity in the law on this issue, both before and as a result of the NPRM, the Commission is concerned that retroactive application of this *Order* to menu-driven prepaid calling cards would be so unfair to providers of such cards as to work a ''manifest injustice.'' For example, the Commission recognizes that retroactive application of its decision would be burdensome for menu-driven prepaid calling card providers, in that the decision subjects them to access charges, Universal Service Fund contribution obligations, and the full panoply of Title II obligations. The Commission also recognizes that, given the state of the law at the time, parties may have relied on the assumption that they would not be subject to these burdens. For these reasons, the Commission concludes that its decision that menu-driven calling cards offer telecommunications services and that their providers are subject to regulation as telecommunications carriers shall have prospective effect only.

24. To give prepaid calling card providers sufficient time to implement this new regulatory regime, this *Order* will take effect on October 31, 2006. The certification requirements set forth above are effective according to the timeframe outlined above.

**Certification Filing Procedures**

25. Pursuant to § 64.5001 of the Commission's rules, all prepaid calling card providers shall file the quarterly reports described above in WC Docket No. 05–68. The first certification reports are due the last day of the first full calendar quarter after the effective date of this item and OMB approval of this requirement. Certification reports may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Certification reports filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Only one copy of an electronic submission must be filed in a single docket. On completing each transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 05–68. Parties may also submit an electronic report by Internet e-mail. To get filing instructions for e-mail reports, reporters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and instructions will be sent in reply. Parties are strongly encouraged to file their certification reports electronically using the Commission's ECFS.

26. Parties who choose to file by paper must file an original and four copies of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners, and any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

27. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send one copy of their filings to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, parties should send one copy to the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

28. Documents in WC Docket No. 05–68 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.* Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.*

**Final Regulatory Flexibility Analysis**

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking,* 70 FR 12828, March 16, 2005. The Commission sought written public comment on the proposals in the *Order and Notice of Proposed Rulemaking,* including comment on the IRFA. We received no comments specifically directed to the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**Need for, and Objectives of, the Report and Order**

30. On May 15, 2003, AT&T filed a petition for declaratory ruling that intrastate access charges did not apply to calls made using its ''enhanced'' prepaid calling cards when the calling card platform is located outside the state in which either the calling or the called party is located. On November 22, 2004, AT&T submitted an *ex parte* letter requesting a declaratory ruling on two additional types of ''enhanced'' prepaid calling card offerings: One card that offers the caller a menu of options to access non-call-related information, and a second card that utilizes Internet Protocol (IP) technology, accessed by 8YY dialing, to transport a portion of the calling card call.

31. On February 16, 2005, the Commission released a *Report and Order and Notice of Proposed Rulemaking* denying AT&T's petition and requiring it to contribute to the Federal Universal Service Fund based on its interstate prepaid calling card revenue. The *NPRM* portion of that item sought comment on the appropriate regulatory treatment of AT&T's additional prepaid calling card types and any other current or planned prepaid calling card offerings. On May 3, 2005, AT&T filed an Emergency Petition for Interim Relief asking the Commission to impose Federal universal service funding obligations on all prepaid calling card providers regardless of whether the cards offer telecommunications or information services. AT&T's Emergency Petition also requested that the Commission issue interim rules subjecting all prepaid calling card providers to the same types of access charges.

32. In this *Order,* we find that providers of the types of cards upon which the Commission sought comment in the NPRM offer telecommunications services. Consequently, providers of these types of prepaid calling cards will

be treated as telecommunications carriers and therefore must pay access charges, contribute to the Universal Service Fund, and comply with all the other applicable obligations under the Communications Act and the Commission's rules. Prepaid calling card providers that use SS7 must pass the CPN of the calling party (the cardholder), and the CN where appropriate, and not pass the telephone number associated with the calling card platform in the CPN or CN parameter of the SS7 stream.

33. We also adopt interim rules requiring that prepaid calling card providers report prepaid calling card PIU factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. We also require that prepaid calling card providers certify to the Commission that they are providing PIU and CPN information to other carriers as required above and that they report their total intrastate, interstate, and international calling card minutes and revenues.

34. The requirements imposed on prepaid calling card providers in this *Order* are necessary to preserve and advance the Universal Service Fund, provide regulatory certainty and prevent ''gaming'' of the system. The Commission believes the public interest will best be served by eliminating any uncertainty and promoting stability in the prepaid calling card market through the adoption of this *Order.*

35. In the *Calling Card Order and NPRM,* the Commission noted that military personnel rely heavily on prepaid calling cards and asked what steps, if any, it should take to ensure that such cards remain reasonably priced. In this *Order* we decide that the public interest will be served by exempting revenue from prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity from the above-described universal service contribution obligations. As such, on an interim basis, prepaid calling card providers are not required to pay USF contributions on revenue generated from prepaid calling cards sold by, to, or pursuant to contract with DoD or a DoD entity.

**Significant Issues Raised by Public Comments in Response to the IRFA**

36. No comments were received regarding the IRFA.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

37. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

38. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

39. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

40. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were a total of 2,225 firms in this category that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

41. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers reported that they were incumbent local exchange service providers. In addition, according to Commission data, 769 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 companies, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 39 carriers reported that they were ''Other Local Service Providers.'' Of the 39 ''Other Local Service Providers,'' an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and ''Other Local Service Providers'' are small entities that may be affected by the rules and policies proposed herein.

42. *Telecommunications Resellers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 companies reported that they were engaged in the provision of prepaid calling cards. Of these 89 companies, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

43. In this *Order,* we hold that providers of the types of cards upon

which the Commission sought comment in the *NPRM* offer telecommunications services. As a result of this finding, these prepaid calling card providers are now treated as telecommunications carriers and therefore are subject to the Communications Act and the Commission's rules, including all applicable reporting and recordkeeping requirements. For example, they now must submit to USAC the reports required in connection with contributions to the Federal USF.

44. In this *Order,* we also adopt new interim rules applicable to all prepaid calling card providers. Prepaid calling card providers must report prepaid calling card PIU factors, and call volumes on which these factors were calculated, based on not less than a one-day representative sample, to those carriers from whom they purchase transport services. They also must certify to the Commission that they are complying with this PIU reporting requirement. This certification also must include information on total intrastate, interstate, and international calling card minutes and revenue, and a statement that they are contributing to the Federal USF based on all interstate and international revenues, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with DoD or a DoD entity.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1) through (c)(4).

46. In this *Order,* the Commission finds that certain types of prepaid calling card providers are telecommunications carriers and therefore subject to applicable requirements of the Communications Act and the Commission's rules, including the obligation to pay access charges and contribute to the Universal Service Fund. We apply these existing rules for the purpose of preserving and advancing universal service and providing regulatory certainty. A strong, well-funded USF is one of the Commission's regulatory mandates and is in the public interest. The clear application of regulations to the prepaid calling card industry also will promote regulatory certainty, foster innovation and competition, and avoid market disruption during the pendency of this and other rulemaking proceedings. We rejected AT&T's suggestion to address a more limited set of issues on the ground that such an approach would not provide the necessary certainty and stability. After reviewing the record, we conclude that the best way to meet our goals of preserving and advancing universal service and providing certainty to the prepaid calling card market is to subject all prepaid calling card providers to the same requirements.

47. In this *Order,* we also adopt interim rules requiring all prepaid calling card providers to meet certain reporting requirements. Specifically, they must report prepaid calling card PIU factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. The interim rules also require that prepaid calling card providers make quarterly certifications to the Commission. Specifically, they must certify that they have complied with the reporting requirements discussed above. In addition, they must provide information on total intrastate, interstate, and international calling card minutes and revenues, and include a statement that they are contributing to the federal USF based on the reported information. AT&T proposed that prepaid calling card providers comply with a much more extensive set of reporting and certification requirements. We rejected these additional reporting and certification requirements because they would prove too burdensome to small prepaid calling card providers.

48. As described above, the Commission has considered a variety of alternative approaches for regulating prepaid calling card providers. In weighing these alternatives we tried to balance our desire not to unduly burden small entities (small prepaid card providers, as well as small LECs and small IXCs) with our goals of ensuring regulatory certainty, preserving and advancing universal service, and avoiding market disruption during the pendency of other rulemakings. The *Order* we adopt achieves this balance by applying the same rules to all prepaid calling card providers, while at the same time rejecting proposals that would place excessive burdens on small companies.

**Report to Congress**

49. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**, 5 U.S.C. 604(b).

**Paperwork Reduction Act Analysis**

50. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

**Ordering Clauses**

51. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 202, and 254, this Declaratory Ruling and Report and Order in WC Docket No. 05–68 is adopted, and that parts 54 and 64 of the Commission's rules, 47 CFR parts 54 and 64, are *amended* as set forth in the rule changes.

52. *It is further ordered* that AT&T's Emergency Petition for Immediate Interim Relief is granted in part and denied in part as set forth herein.

53. *It is further ordered* that the final rules and rule revisions adopted in this Declaratory Ruling and Report and Order shall become effective October 31, 2006.

54. *It is further ordered* that all prepaid calling card providers shall file an initial certification as required herein no later than the last day of the first full calendar quarter after OMB approval of this requirement.

55. *It is further ordered* that the Frontier Petition for Declaratory Ruling *is granted* as set forth herein and otherwise *is denied.*

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Declaratory Ruling and Report and

Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Parts 54 and 64**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

## PART 54—UNIVERSAL SERVICE

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

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.706 is amended by adding paragraph (a)(19) and revising paragraph (d) to read as follows:

**§ 54.706 Contributions.**

(a) * * *

(19) Prepaid calling card providers.

* * * * *

(d) Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications. Prepaid calling card providers are not required to contribute on the basis of revenues derived from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 4. Amend part 64 by adding subpart DD to read as follows:

### Subpart DD—Prepaid Calling Card Providers

**§ 64.5000 Definitions.**

(a) *Prepaid calling card.* The term ''prepaid calling card'' means a card or similar device that allows users to pay in advance for a specified amount of calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service.

(b) *Prepaid calling card provider.* The term ''prepaid calling card provider'' means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

**§ 64.5001 Reporting and certification requirements.**

(a) All prepaid calling card providers must report prepaid calling card percentage of interstate use (PIU) factors, and call volumes from which these factors were calculated, based on not less than a one-day representative sample, to those carriers from which they purchase transport services. Such reports must be provided no later than the 45th day of each calendar quarter for the previous quarter.

(b) If a prepaid calling card provider fails to provide the appropriate PIU information to a transport provider in the time allowed, the transport provider may apply a 50 percent default PIU factor to the prepaid calling card provider's traffic.

(c) On a quarterly basis, every prepaid calling card provider must submit to the Commission a certification, signed by an officer of the company under penalty of perjury, providing the following information with respect to the prior quarter:

(1) The percentage of intrastate, interstate, and international calling card minutes for that reporting period;

(2) The percentage of total prepaid calling card service revenue (excluding revenue from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity) attributable to interstate and international calls for that reporting period;

(3) A statement that it is making the required Universal Service Fund contribution based on the reported information; and

(4) A statement that it has complied with the reporting requirements described in paragraph (a) of this section.

[FR Doc. E6–12327 Filed 8–1–06; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register
Vol. 71, No. 148
Wednesday, August 2, 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 35

**[Docket No. NE128; Notice No. 35–06–01–SC]**

## Special Conditions: McCauley Propeller Systems, Model 3D15C1401/C80MWX–X Propeller

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for McCauley Propeller Systems. This 3D15C1401/C80MWX–X model propeller will have a novel or unusual design features(s) associated with composite blades. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the added safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** We must receive your comments by September 1, 2006.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Engine and Propeller Directorate, Attn: Jay Turnberg, Rules Docket (ANE–110), Docket No. NE128, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. You may deliver two copies to the Engine and Propeller Directorate at the above address. You must mark your comments: Docket No. NE128 You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jay Turnberg, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7116; fascimile (781) 238–7199; e-mail *jay.turnberg@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### 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 this proposal, 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 November 29, 2004, McCauley Propeller applied for type certification for a new model 3D15C1401/C80MWX–X propeller. This propeller uses blades that are constructed of composite material. The blade has a carbon fiber spar, a shell composed of braided carbon fiber and fiberglass, and metallic leading edge erosion protection to give the material strength properties and durability. The material properties depend on the carbon fiber and fiberglass lay-up and the resin matrix material that bind the blade together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with propellers with metallic hubs and blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike.

In addition, part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

Lastly, the current certification requirements address structural and fatigue evaluation only of metal propeller blades or hubs and metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

### Type Certification Basis

Under the provisions of 14 CFR 21.17, McCauley Propeller Systems must show that the Model 3D15C1401/C80MWX–X propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 35) do not contain adequate or appropriate safety standards for the McCauley Propeller Systems Model 3D15C1401/C80MWX–X propeller, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined by 14 CFR 11.19, in accordance with 14 CFR 11.38, which become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special

conditions would also apply to the other model under § 21.101(d).

**Novel or Unusual Design Features**

The McCauley Propeller Systems Model 3D15C1401/C80MWX–X will incorporate the following novel or unusual design features: Blades constructed of composite materials. Special conditions for centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike are proposed to address the novel and unusual design features. The special conditions are discussed below.

**Discussion**

*Centrifugal Load Tests*

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention capacity and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

*Fatigue Limits and Evaluation*

The current requirement does not adequately address composite materials and is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The proposed special conditions will expand the requirements to include all materials and components whose failure would cause a hazardous propeller effect and take into account material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The proposed special conditions will clarify that the fatigue limits may be determined by tests or analysis based on tests. The components whose failure may cause a hazardous propeller effect include control system components, when applicable.

The proposed special conditions will require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

*Bird Impact*

Currently part 35 has no bird impact requirements. The existing requirements only address the airworthiness considerations associated with propellers that use wood and metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now use composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970's; the safety issue has been addressed by special test and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller will withstand a four-pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over fifty million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four-pound bird has been substantiated by the extensive service history of blades that have been designed using the four-pound bird criteria.

*Lightning Strike*

Currently part 35 has no lightning strike requirements. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970's; the safety issue has been addressed by special tests and special condition for each design using composite blades. The special tests and special condition, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over fifty million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

**Applicability**

As discussed above, these special conditions are applicable to McCauley propeller systems Model 3D15C1401/C80MWX–X. If McCauley Propeller systems applies later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

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

**List of Subjects in 14 CFR Part 35**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for McCauley Propeller Systems Model 3D15C1401/C80MWX–X propellers.

1. *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for compliance with these special conditions the following definitions apply to the propeller:

(a) Propeller—the propeller is defined by the components listed in the type design.

(b) Propeller system—the propeller system consists of the propeller plus all the components necessary for its functioning, but not necessarily included in the propeller type design.

(c) Hazardous propeller effect—a hazardous propeller effect is:

(1) A significant overspeed of the propeller.

(2) The development of excessive drag.

(3) A significant thrust in the opposite direction to that commanded by the pilot.

(4) The release of the propeller or any major portion of the propeller.

(5) A failure that results in excessive unbalance.

(6) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(d) Major propeller effect—A major propeller effect is:

(1) An inability to feather for feathering propellers.

(2) An inability to command a change in propeller pitch.

(3) A significant uncommanded change in pitch.

(4) A significant uncontrollable torque or speed fluctuation.

2. *Centrifugal Load Tests.* McCauley must demonstrate that the propeller, accounting for environmental degradation expected in service, complies with paragraphs (a), (b) and (c) of this section without evidence of failure, malfunction, or permanent

deformation that would result in a hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(a) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum declared rotational speed.

(b) If appropriate, blade features associated with transitions to the retention system (for example a composite blade bonded to a metallic retention), must be tested either during the test of paragraph (a) of this section or in a separate component test.

(c) Components used with or attached to the propeller (for example spinners, de-icing equipment, and blade shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation within the limitations established for the propeller. This must be performed by either:

(1) Testing at the load for a period of 30 minutes, or

(2) Analysis based on test.

3. *Fatigue Limits and Evaluation.*

(a) Fatigue limits.

(1) Fatigue limits must be established by tests, or analysis based on tests, or propeller

(i) Hubs.

(ii) Blades.

(iii) Blade retention components.

(2) The fatigue limits must take into account:

(i) All known and reasonably foreseeable vibration and cyclic load patterns that are expected in service, and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(b) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(1) The intended aircraft by complying with §§ 23.907 or 25.907 as applicable, or

(2) A typical aircraft.

4. *Bird Impact Substantiation.* McCauley must demonstrate, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four-pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

5. *Lightning Strike Substantiation.* McCauley must demonstrate, by test or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Dated: Issued in Burlington, Massachusetts, on July 24, 2006.

**Francis A. Favara,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 06–6633 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25332; Directorate Identifier 2006–CE–40–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The proposed AD would require actions that are intended to address an unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 1, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

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

For service information identified in the proposed AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62.41.73.00; fax: 33 (0)5 62.41.76.54; or SOCATA AIRCRAFT, INC., North Perry Airport, 7501 Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141.

**FOR FURTHER INFORMATION CONTACT:** Gunnar Berg, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. We are prototyping this process and specifically request your comments on its use. You can find more information in FAA draft Order 8040.2, ''Airworthiness Directive Process for Mandatory Continuing Airworthiness Information'' which is currently open for comments at *http://www.faa.gov/aircraft/draft_docs.* This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public.

This process continues to follow all existing AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to follow our technical decision-making processes in all aspects to meet our responsibilities to determine and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

The comment period for this proposed AD is open for 30 days to allow time for comment on both the process and the AD content. In the future, ADs using this process will have a 15-day comment period. The comment period is reduced because the airworthiness authority and manufacturer have already published the documents on which we based our decision, making a longer comment period unnecessary.

**Comments Invited**

We invite you to send any written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–25332; Directorate Identifier 2006–CE–40–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We are also inviting comments, views, or arguments on the new MCAI process. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

**Discussion**

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued AD No. F–2005–034, Issue date: February 16, 2005, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that the aircraft manufacturer has determined that unsatisfactory initial elevator trim actuator greasing may lead to the icing of the elevator trim and generate an untrimmed nose-up attitude after an autopilot disconnection. If not corrected, this condition could result in pitch-up, out-of-trim condition when the autopilot is disconnected. You may obtain further information by examining the MCAI in the docket.

**Relevant Service Information**

EADS SOCATA has issued TBM Aircraft Mandatory Service Bulletin SB70–124, Amendment 1, ATA No. 27, dated January 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the Proposed AD**

This product is manufactured outside the United States and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral agreement. Pursuant to this bilateral airworthiness agreement, the State of Design's airworthiness authority has notified us of the unsafe condition described in the MCAI and service information referenced above. We have examined the airworthiness authority's findings, evaluated all pertinent information, and determined an unsafe condition exists and is likely to exist or develop on all products of this type design. We are issuing this proposed AD to correct the unsafe condition.

**Differences Between the Proposed AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These proposed requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 256 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to do the action and that the average labor rate is $80 per work-hour. Required parts would cost about $8 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $22,528, or $88 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies 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 FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**Examining the AD Docket**

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**EADS SOCATA:** FAA–2006–25332; Directorate Identifier 2006–CE–40–AD

**Comments Due Date**

(a) We must receive comments on this proposed airworthiness directive (AD) by September 1, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following Model TBM 700 airplanes that are certificated in any U.S. category: serial numbers 1 through 32, 34, 36 through 69, 71 through 76, 79, 81 through 92, 96 through 98, 101, 102, 107 through 109, 112 through 114, 116, 118 through 124, 126 through 130, 132 through 135, 137, 138, 140 through 145, 148 through 155, 157, 158, 161 through 268, and 270 through 304.

**Reason**

(d) The mandatory continuing airworthiness information (MCAI) states that the aircraft manufacturer has determined that unsatisfactory initial elevator trim actuator greasing may lead to the icing of the elevator trim and generate an untrimmed nose-up attitude after an autopilot disconnection. If not corrected, this condition could result in pitch-up, out-of-trim condition when the autopilot is disconnected.

**Actions and Compliance**

(e) Unless already done, do the following except as stated in paragraph (f) below.

(1) Within the next 25 hours time-in-service after the effective date of this AD, lubricate the elevator trim tab actuator rods without removal.

(2) Do the action required in paragraph (e)(1) of the AD following EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB70–124, Amendment 1, ATA No. 27, dated January 2005.

**FAA AD Differences**

(f) None.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Gunnar Berg, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Return to Airworthiness:* When complying with this AD, perform FAA-approved corrective actions before returning the product to an airworthy condition.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) This AD is related to MCAI French AD No. F–2005–034, Issue date: February 16, 2005, which references EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB70–124, Amendment 1, ATA No. 27, dated January 2005.

Issued in Kansas City, Missouri, on July 25, 2006.

**James E. Jackson,**

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

[FR Doc. E6–12419 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25270; Airspace Docket 06–ASO–9]**

## Proposed Establishment of Class D Airspace; Eastman, GA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to change the name of the Eastman-Dodge County Airport to Heart of Georgia Regional Airport and to establish Class D airspace at Eastman, GA. On October 9, 1995, the Eastman-Dodge County Airport Authority adopted a name change for the airport. A non-Federal contract tower with a weather reporting system is being constructed at Heart of Georgia Regional Airport. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of the airport.

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

**ADDRESSES:** Send comments on this proposal 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–2006–25270 Airspace Docket No. 06–ASO–9, 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 proposal, 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.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25270/Airspace Docket No. 06–ASO–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Eastman, GA. Class D airspace designations for airspace areas extending upward from the surface of the earth 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 designations listed in this document would be published subsequently in the Order.

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

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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. 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 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.*

* * * * *

**ASO GA D Eastman, GA [NEW]**

Heart of Georgia Regional Airport, GA
(Lat. 30°22′04″ N, long. 89°27′17″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of the Heart of Georgia Regional Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 13, 2006.

**Mark D. Ward,**

*Acting Area Director, Air Traffic Division, Southern Region.*

[FR Doc. 06–6636 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25392; Airspace Docket 06–ASO–10]**

## Proposed Establishment of Class E Airspace; Butler, GA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Butler, GA. Area Navigation (RNAV) Global Positioning System (GPS) and Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedures (SIAPs) Runway (RWY) 18 and RWY 36 have been developed for Butler Municipal Airport. As a result, controlled airspace extending upward From 700 Feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Butler Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAPs.

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

**ADDRESSES:** Send comments on this proposal 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–2006–25392; Airspace Docket 06–ASO–10, 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 proposal, 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.

An informal docket may also be examined during normal business hours at the offie of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket No. FAA–2006–25392/Airspace Docket No. 06–ASO–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to establish Class E airspace at Butler, GA. 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 would be published subsequently in the Order.

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

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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. 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 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.*

* * * * *

**ASO GA E5 Butler, GA [NEW]**

Butler Municipal Airport, GA
(Lat. 32°34′03″ N, long. 84°15′03″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-radius of Butler Municipal Airport.

* * * * *

Issued in College Park, Georgia, on July 13, 2006.

**Mark D. Ward,**

*Acting Area Director, Air Traffic Division, Southern Region.*

[FR Doc. 06–6635 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25069; Airspace Docket No. 06–AWP–9]**

## Proposed Modification of Class E Airspace; Honolulu International Airport, HI; Correction

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

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This action corrects an error in the airspace description of the Notice of Proposed Rulemaking that was published in the **Federal Register** on July 12, 2006 (71 FR 39247), Airspace Docket No. 06–AWP–9.

**DATES:** Comments must be received by September 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Francie Hope, Airspace Specialist, Western Service Area, AWP–520, Western–Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

**SUPPLEMENTARY INFORMATION:**

**History**

**Federal Register** Document 06–6143, Airspace Docket No. 06–AWP–9, published on July 12, 2006 (71 FR 39247), modified the description of the Class E airspace area at Honolulu International Airport, HI. An error was discovered in the airspace description for the Honolulu International Airport, HI. Class E airspace area. This action corrects that error.

**Correction to Notice of Proposed Rulemaking**

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Honolulu International Airport, HI, as published in the **Federal Register** on July 12, 2006 (71 FR 39247), **Federal Register** Document 06–6143; page 39248, column 1), is corrected as follows:

**§ 71.1 [Corrected]**

* * * * *

**AWP HI E5 Honolulu International Airport, HI [Corrected]**

That airspace extending upward from 700 feet above the surface south and southeast of Honolulu International Airport beginning at Lat. 21 20′19″ N., long. 157 49′00″ W., thence southeast to lat. 21 16′31.15″ N., long. 157 45′11.19″ W., thence east along the shoreline

to where the shoreline intercepts the Honolulu VORTAC 15-mile radius, then clockwise along the 15-mile radius of the Honolulu VORTAC to intercept the Honolulu VORTAC 241 radial, then northeast bound along the Honolulu VORTAC 241 radial to intercept the 4.3-mile radius south of Kalaeloa John Rogers Field, then counterclockwise along the arc of the 4.3-mile radius of Kalaeloa John Rogers Field, to and counterclockwise along the arc of a 5-mile radius of the Honolulu VORTAC to the Honolulu VORTAC 106° radial, then westbound along the Honolulu 106° radial to the 4-mile radius of the Honolulu VORTAC, then counterclockwise along the 4-mile radius to intercept the Honolulu VORTAC 071° radial, thence to the point of beginning and that airspace beginning at lat. 21 10′25″ N., long. 158 11′22″ W.; to lat. 21 16′05″ N., long. 158 14′35″ W.; to lat. 21 16′30″ N., long 158 13′46″ W.; to lat. 21 16′50″ N., long. 158 00′00″ W., to the point of beginning.

* * * * *

Dated: Issued in Los Angeles, California, on July 21, 2006.

**Leonard A. Mobley,**

*Acting Area Director, Western Terminal Operations.*

[FR Doc. 06–6634 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–13–M**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 38

**RIN 3038–AC28**

### Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

**AGENCY:** Commodity Futures Trading Commission (''Commission'').

**ACTION:** Extension of comment period.

**SUMMARY:** On July 7, 2006, the Commission published proposed Acceptable Practices for section 5(d)(15) of the Commodity Exchange Act (''Act'').[1] Comments on the proposal were originally due by August 7, 2006. Now, at the request of interested parties, the Commission is extending the comment period to September 7, 2006.

**DATES:** Comments must be received by September 7, 2006.

**ADDRESSES:** Written comments should be sent to Eileen A. Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may also be submitted via E-mail at *secretary@cftc.gov*. ''Regulatory Governance'' must be in the subject field of responses submitted via E-mail, and clearly indicated in written submissions. Comments may also be submitted to the Federal eRulemaking Portal: *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418–5429; or Sebastian Pujol Schott, Special Counsel, (202) 418–5641. Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** On July 7, 2006, the Commission published and sought public comment on proposed Acceptable Practices for Section 5(d)(15) of the Act (''Core Principle 15''). The proposed Acceptable Practices would provide designated contract markets (''DCMs'') with a safe harbor for compliance with selected aspects of Core Principle 15's requirement that they minimize conflicts of interest in their decision-making. The Commission's proposal contains four parts. First, the Board Composition Acceptable Practice proposes that DCMs minimize potential conflicts of interest by maintaining governing boards composed of at least fifty percent ''public'' directors. Second, the proposed Regulatory Oversight Committee Acceptable Practice calls upon DCMs to establish board-level Regulatory Oversight Committees, composed solely of public directors, to oversee regulatory functions. Third, the Disciplinary Panel Acceptable Practice proposes that each disciplinary panel at all DCMs include at least one public participant, and that no panel be dominated by any group or class of exchange members. Finally, the proposed Acceptable Practices provide a definition of ''public'' for DCM directors and for members of disciplinary panels.

By letters dated July 14 and July 17, 2006, the Chicago Board of Trade (''CBOT'') and Chicago Mercantile Exchange (''CME''), respectively, requested that the original comment period be extended. CBOT requested an extension to at least September 6, and CME requested an extension to at least September 7. Recognizing the significance of the issues raised in the proposed Acceptable Practices, and to encourage the submission of meaningful comments, the Commission has decided to grant the requests. The comment period for the Commission's proposed Acceptable Practices for Section 5(d)(15) of the Act is hereby extended to September 7, 2006.

Issued in Washington, DC, on July 28, 2006, by the Commission.

**Maria C. Alvarez-Kouns,**

*Paralegal Specialist.*

[FR Doc. E6–12448 Filed 8–1–06; 8:45 am]

**BILLING CODE 6351–01–P**

[1] 71 FR 38740 (July 7, 2006).

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### 19 CFR Parts 4 and 122

**[USCBP–2005–0003]**

**RIN 1651–AA62**

### Passenger Manifests for Commercial Aircraft Arriving in and Departing From the United States; Passenger and Crew Manifests for Commercial Vessels Departing From the United States

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** This document provides an additional 60 days for interested persons to submit comments on the proposed rule to amend the Customs and Border Protection Regulations pertaining to the electronic transmission of passenger manifests for commercial aircraft arriving in and departing from the United States and of passenger and crew manifests for commercial vessels departing from the United States. The proposed rule provides air carriers a choice to make manifest transmissions either for each passenger as passengers check in for the flight, up to but no later than 15 minutes prior to departure, or in batch form (a complete manifest containing all passenger data) no later than 60 minutes prior to departure. The proposed rule also provides for vessel carriers transmitting passenger and crew manifests no later than 60 minutes prior to the vessel's departure from the United States. The proposed rule was published in the **Federal Register** on July 14, 2006, and the comment period was scheduled to expire on August 14, 2006.

**DATES:** Comments on the proposed rule must be received on or before October 12, 2006.

**ADDRESSES:** You may submit comments, identified by docket number USCBP–2005–0003, by *one* of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

(2) Mail: Comments by mail are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Border Security Regulations Branch, 1300 Pennsylvania Ave., NW. (Mint Annex), Washington, DC 20229.

(3) Hand delivery/courier: 799 9th Street, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Charles Perez, Program Manager, Office of Field Operations, Bureau of Customs and Border Protection (202–344–2605).

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

The Bureau of Customs and Border Protection (CBP) invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking (USCBP–2005–0003). All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC 20220. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

**Background**

CBP published a document in the **Federal Register** (71 FR 40035) on July 14, 2006, proposing to amend the CBP Regulations pertaining to the electronic transmission of passenger manifests for commercial aircraft arriving in and departing from the United States and of passenger and crew manifests for commercial vessels departing from the United States. The proposed changes were designed to implement the mandate of the Intelligence Reform and Terrorism Prevention Act of 2004 to require screening of aircraft passengers and vessel passengers and crew traveling to and from the United States against a government established terrorist watch list prior to departure. Thus, the proposed rule provides air carriers a choice to make manifest transmissions either for each passenger as passengers check in for the flight, up to but no later than 15 minutes prior to departure, referred to as APIS Quick Query (AQQ), or in batch form (a complete manifest containing data for all passengers) no later than 60 minutes prior to departure, referred to as APIS 60. The proposed rule also provides for vessel carriers transmitting passenger and crew manifests no later than 60 minutes prior to the vessel's departure from the United States. In addition, the proposed rule proposes to change the definition of ''departure'' for aircraft to mean the moment the aircraft pushes back from the gate to commence its approach to the point of takeoff (as opposed to the moment the wheels are drawn up into the aircraft just after takeoff).

The document invited the public to comment on the proposal, including the Regulatory Assessment containing an analysis of the expected economic impact of the changes. The Regulatory Assessment is posted on *http://www.regulations.gov* and on the CBP Web site at *http://www.cbp.gov* (it is also summarized in the proposed rule). Comments on the proposed rule were requested on or before August 14, 2006.

**Extension of Comment Period**

In response to the proposed rule published in the **Federal Register**, CBP has received comments from the Air Transport Association (ATA), the Air Carrier Association of America (ACAA), and the International Air Transport Association (IATA), requesting an extension of the comment period for an additional 60 days. CBP has determined to grant the requests for extension. Accordingly, the period of time for the submission of comments is being extended 60 days. Comments are now due on or before October 12, 2006.

Dated: July 28, 2006.

**Deborah J. Spero,**

*Deputy Commissioner, Customs and Border Protection.*

[FR Doc. E6–12473 Filed 8–1–06; 8:45 am]

**BILLING CODE 9111–14–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 95

**[ET Docket No. 06–135; FCC 06–103]**

## Spectrum Requirements for Advanced Medical Technologies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document focuses on ways to better accommodate the operation of implanted and body-worn medical transmitters in the 400 MHz band. These devices use wireless technologies for increasingly sophisticated and beneficial health care applications. Such applications currently include cardiac defibrillators for heart patients and real-time blood sugar monitoring devices for diabetics, and may, in the future, include applications as diverse as brain, muscle and nerve stimulation techniques for treating an array of conditions from Parkinson's disease to severe chronic depression. The Commission tentatively concludes that modifying its current rules and designating an additional two megahertz of spectrum in the adjacent 401–402 MHz and 405–406 MHz bands) would appropriately provide needed capacity and more flexible operating rules for beneficial medical radio communication devices and thereby serve the public interest.

**DATES:** Comments must be filed on or before October 31, 2006, and reply comments must be filed on or before December 4, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gary Thayer, Office of Engineering and Technology, (202) 418–2290, e-mail: *Gary.Thayer@fcc.gov,* TTY (202) 418–2989.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 06–135 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making and Notice of Inquiry,* ET Docket No. 06–135, FCC 06–103, adopted July 13, 2006, and released July 18, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Summary of Notice of Proposed Rulemaking and Notice of Inquiry**

1. The *Notice of Proposed Rule Making (NPRM) and Notice of Inquiry (Inquiry),* focuses on ways to better accommodate the operation of implanted and body-worn medical transmitters in the 400 MHz band. These devices use wireless technologies for increasingly sophisticated and beneficial health care applications. Such applications currently include cardiac defibrillators for heart patients and real-time blood sugar monitoring devices for diabetics, and may, in the future, include applications as diverse as brain, muscle and nerve stimulation techniques for treating an array of conditions from paralysis to Parkinson's disease to severe chronic depression. The Commission tentatively concludes that modifying its current rules and designating an additional two megahertz of spectrum would appropriately provide increased capacity and more flexible operating rules for beneficial medical radio communication devices and thereby serve the public interest.

2. Medtronic, Inc., filed a Petition for Rulemaking (Medtronic petition) proposing to establish a new service for implantable and body-worn medical radiocommunication devices in two megahertz of spectrum (at 401–402 MHz and 405–406 MHz) adjacent to the 402–405 MHz band currently authorized for the Medical Implant Communications Service (MICS). Medtronic states that this new allocation would complement the existing MICS allocation and support advances in medical sensor technology and the expected proliferation of such devices, especially those used for lower-cost medical monitoring and non-emergency reporting applications. Biotronik, Inc., has also filed a petition for rulemaking with proposals that conflict with those in the Medtronic petition, and that petition is also being considered.

3. As demonstrated by developments in the industry and by the response to the Medtronic petition for rulemaking, there is significant interest in using the 401–406 MHz MICS band for new diagnostic, therapeutic, and monitoring medical technologies. Based on the information provided by all parties, the FCC is proposing to add two additional megahertz of spectrum for implanted and body-worn medical transmitters to the existing MICS allocation at 402–405 MHz. It specifically proposes to add the 401–402 MHz and 405–406 MHz (''wing bands'') to the existing MICS allocation. These bands appear well-suited for implanted and body-worn medical radio devices for the same reasons 402–405 MHz was originally designated for MICS, i.e., propagation characteristics, availability, and compatibility with other users. It asserts that the provision of contiguous spectrum will provide for the maximum efficiency of design and operation.

4. The FCC proposes to maintain the existing MICS rules in this spectrum, and continue to license use of MICS devices by rule. It further proposes to permit non-implanted antennas connected through the body to implanted devices under these rules. Accordingly, it will henceforth refer to this service as ''Medical Device Radiocommunication Service,'' (''MedRadio''), to eliminate the implication that it is intended exclusively for implanted radios or implanted devices. It seeks comment on whether the various current MICS rules would continue to be appropriate for

operations under the new allocation, on the explicit inclusion of non-implanted transmitters, on whether or how to divide the spectrum between frequency agile and non-frequency-agile devices, and on whether certain medical devices as contemplated herein would be better served by a licensed operation regime.

5. In addition, the Commission seeks comment on whether there are some functions for which a narrower bandwidth is appropriate, and why, and whether there is sufficient justification for the more stringent attenuation limits described in the Medtronic petition. Commenters supporting emission limits other than those currently in the rules should provide technical analysis and practical rationale explaining why other limits would be more appropriate, and the relative difficulty or cost of compliance associated with their proposed limits. Commenters proposing a reduced field strength for body-worn transmitters should also provide technical analysis supporting their position.

6. The Commission also proposes to adopt rules for the 401–402 MHz and 405–406 MHz bands that would permit body-worn and implant transmitters having low-power and low duty cycles to operate without frequency monitoring capability, as suggested by Medtronic and supported by several commenters. Because such devices would pose a small risk of causing harmful interference, the Commission believes that permitting the operation of such devices without frequency monitoring could simplify devices, reduce their size, and extend their operational life. This could help lower the cost of medical data collection and therapy in both the care center and home environments, as well as provide physicians with an easy and accurate way to make routine adjustments to internal and external medical radio devices such as neural stimulators and insulin pumps. It suggests that providing additional spectrum for deployment of these devices could prove beneficial in keeping otherwise healthy individuals out of hospital beds and nursing facilities and allow many more individuals to live independently for a longer period of time. It seeks comment on the potential benefits of expanding the authority for operation of 400 MHz medical devices that do not employ frequency agility capabilities.

7. Specifically, it proposes to allow medical implant or body-worn devices and associated control station devices that operate without frequency agility at 401–402 MHz and 405–406 MHz to operate with an EIRP that does not exceed 250 nanowatts (nW) and a duty cycle that does not exceed 0.1% during any one-hour interval. Based on the information available to us, this proposal appears to reflect a reasonable balance between the operational capabilities needed for devices to function properly and the need to minimize the risk of interference to other devices in the band. The Commission seeks comment on this proposal, including whether other power and duty cycle thresholds would be more appropriate, and what trade-offs they would entail.

8. It also notes Biotronik's contention that there is ample capacity in the current MICS allocation for a variety and large number of devices, and seeks additional comment on whether the additional spectrum proposed is needed for future medical devices, or whether such devices should be accommodated in the existing 402–405 MHz allocations, with appropriate modifications to the operational rules (100nw and 0.1%/day duty cycle), such as those proposed by Biotronik in its rulemaking petition. It also invites comment on whether the 401–406 MHz band should be apportioned differently among the various types of operation than as proposed, both in relative amounts of spectrum designated, and in the specific frequencies permitted for each type of operation. For instance, should a portion of spectrum be exclusively designated for non-frequency-monitoring devices, and if so, how much? Can the provision of exclusive spectrum for frequency monitoring devices be made unnecessary by appropriate restrictions on other devices? Is additional spectrum beyond that proposed above needed for implanted and body-worn medical radio devices? Comments suggesting the allocation of additional spectrum should discuss the basis for projecting future types of uses and needs.

9. While the present MICS rules can be read to have assumed that an implant transmitter, as part of an implant device, would be located under the skin, it is now apparent that transmitters for implanted devices can, in many cases, be located on the surface of the skin. Additionally, it appears that there are body-worn devices that can perform critical diagnostic, therapeutic, and monitoring functions, and the Commission proposes to accommodate such devices in our rules. In both cases, the Commission believes that it is the location of the transmitter, not the medical device, that should dictate its operational parameters, as it is the location that will determine its communication capability and its interference potential. It proposes to modify the rules to so provide. It also seeks comment on Medtronic's proposed definition of a body-worn transmitter as one ''intended to be placed on or in very close proximity (six centimeters or less) to the human body used to facilitate communications from a medical body-worn or implanted device.

10. The Commission proposes to focus on providing flexibility in the use of spectrum for implanted and body-worn medical radio devices. The Commission notes that the Medtronic petition suggests distinctions depending upon factors such as whether a device uses spectrum intensively or is used for life-critical applications. The Commission asserts that it is neither its role, nor its area of expertise, to adopt rules that would define operating criteria based upon such determinations. Instead, medical device manufacturers should be cognizant of the potential health and safety risks that could arise if implanted or body-worn medical radiocommunication devices are subjected to various levels of RF interference in a dynamic and unpredictable RF environment, and design their products with appropriate safeguards and robustness as is appropriate to their function. It further suggest that such concerns are more appropriately taken into consideration and evaluated as part of the FDA medical device approval process. Therefore, the it declines to propose any rules based upon such criteria, and seeks comment on this position.

11. Part 15 of the FCC's rules restricts radiation from unlicensed devices in certain frequency bands (''restricted bands'') to spurious emissions only. The 90–110 kHz band is included among the restricted bands in order to protect incumbent the Loran-C operations.

12. Guidant Corporation (Guidant) (now Boston Scientific) states that it is unclear how induction devices fit under the Commission's restricted band prohibition of § 15.205, and asks the Commission to amend the part 95 rules to include medical implant devices such as those made by Guidant that use inductive telemetry in the 90–110 kHz band. More specifically, it requests that the Commission provide a narrow exception to the part 15 restricted band prohibitions for medical implants or, preferably, amend the MICS rules to expressly include all implants, including those that operate inductively in the 90–110 kHz band.

13. The FCC seeks comment on whether inductive devices such as those made by Guidant should be authorized to operate if they produce RF energy in the 90–110 kHz band. It asks

commenters to address the advantages and disadvantages of allowing or prohibiting such operation, including the resulting interference potential. If such operation were to be permitted, what approach should be taken? For example, similar to the modified MedRadio rules proposed herein, a secondary allocation for inductively coupled medical devices could be created in the 90–110 kHz band on a licensed-by-rule basis under part 95. Another option would be to provide an exception to the restricted band spurious emission limits for unlicensed medical devices that use inductive coupling in the 90–110 kHz band. Alternatively, a waiver could be granted that would permit manufacture, sale, and use of such devices for a limited period of time until devices fully compliant with the present rules can be developed. It invites commenters to address the relative merits of these options, and to suggest any other options. It also seeks comment on the more general question raised by Guidant concerning how to address emissions from medical implant devices that employ inductive coupling technology for communicating with associated external devices.

14. The Commission also begins an Inquiry into additional developments that are anticipated in the medical devices field and their likely spectrum requirements that will enable us to subsequently develop proposals for additional rules as may be appropriate for their operation, based on the input received. Increasing numbers of implanted and body-worn medical devices will rely upon wireless radiocommunication technologies for increasingly sophisticated therapies. These include devices to assist in everything from motor function to eyesight, significantly mitigating the effects of once debilitating injuries or diseases. Accordingly, we seek to develop a comprehensive record concerning the present and future RF spectrum requirements as well as device immunity issues with respect to these medical radio devices in order to better inform our current rulemaking effort and to provide a basis for further rule changes. The Commission seeks information concerning new and anticipated implant and body-worn medical radiocommunication technologies and how it can anticipate and proactively address the challenging array of RF spectrum sharing issues raised by their increasing use, including the protection of user health and safety when implants receive interference from primary allocated services in the band. The Commission seeks comment on the relative benefits and tradeoffs that should be considered with respect to both licensed and unlicensed approaches to authorizing the operation of these devices.

15. Finally, the Commission also seeks comment on collaborative efforts between the Commission (FCC) and the U.S. Food and Drug Administration (FDA) regarding options for better educating device manufacturing industry leaders and RF wireless technology leaders about medical radio device electromagnetic compatibility (EMC) coexistence issues in an RF environment. The Commission's goal is to create an environment that fosters continuing advances in medical devices through flexible RF spectrum allocations with the minimum FCC regulatory requirements that are necessary for efficient use of the spectrum and to ensure patient safety.

## Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rule Making* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 53 of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

### *A. Need for, and Objectives of, the Proposed Rules*

17. In this proceeding, the Commission explores future spectrum requirements for advanced medical devices that use wireless radiocommunication technologies. Wireless technologies are increasingly being used in medical devices for a variety of purposes ranging from basic telemetry transmission to more sophisticated health care applications.[3] Our focus in this proceeding is primarily on implanted and body-worn medical radiocommunication devices (MRDs) that serve to actively manage and maintain body function/health conditions.[4] Technological advances in this field are evolutionizing health care for the benefit of all Americans. Our goal is to create an environment that fosters continuing advances through flexible RF spectrum allocations and reduced regulatory requirements.

18. Based on the responses we have received to a Petition for Rulemaking from Medtronic, Inc., the Commission believes that there is need for additional spectrum in the 400 MHz range for implanted and body-worn MRDs. Thus, in the Rulemaking portion of this proceeding, the Commission proposes to allocate two megahertz of spectrum for use by MRDs in the 401–402 MHz and 405–406 MHz bands that are adjacent to the existing Medical Implant Communication Service (MICS) allocation in the 402–505 MHz band. The Commission seeks comment on establishing a new Medical Data Service (MEDS) that would encompass all MRDs operating in the entire 401–406 MHz band.

### *B. Legal Basis*

19. The proposed action is authorized under sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332.

### *C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply*

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern''

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] Telemetry is the use of telecommunication for automatically indicating or recording measurements at a distance from the measuring instrument. 47 CFR 2.1.

[4] Part 95 of the Commission's rules define ''medical implant transmitter'' as a ''* * * transmitter that operates or is designed to operate within the human body for the purpose of facilitating communications from a medical implant device.'' *See Appendix 1 to Subpart E of Part 95—Glossary of Terms* (following 47 CFR 95.673). The term ''body-worn'' is not defined by our current rules, however, as discussed in Rulemaking herein, we propose to adopt an analogous definition for medical body-worn transmitters namely, a ''transmitter intended to be placed on or in very close proximity (*i.e.*, 6 centimeters or less) to the human body used to facilitate communications from a medical body-worn or implanted device.''

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

under the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

21. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[9] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[10] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[11] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[12] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[13] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[14] Thus, we estimate that most governmental jurisdictions are small.

*Personal Radio Services.* We are proposing to place the MEDS within part 95 of our rules (''Personal Radio Services''). Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of our rules.[15] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information other than the census data above, upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

*Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging''[16] and ''Cellular and Other Wireless Telecommunications.''[17] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[18] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[19] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[20] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[21] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

*Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[22] For small businesses in this category, the above small business size standard applies to 1500 or fewer employees. There are a total of approximately 127,540 licensees in these services. Governmental entities[23] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[24]

### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

22. We propose a licensing approach for the 401–402 MHz and 405–406 MHz wing bands identical to that used for the existing MICS center band. Thus, rather than require individual transmitter licensing, we propose to authorize operation by rule within the Citizens Band (CB) Radio Service under part 95 of our rules and pursuant to section 307(e) of the Communications Act.[25] Under this proposal, licensing would be accomplished through adherence to applicable technical standards and other operating rules (unlicensed operations). We tentatively conclude that this approach is beneficial because it would minimize the administrative burden on prospective licensees as compared with an individual licensing. We seek comment on this proposal. Commenters

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[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[10] 5 U.S.C. 601(4).

[11] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[12] 5 U.S.C. 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[14] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[15] 47 CFR part 90.

[16] 13 CFR 121.201, NAICS code 517211.

[17] 13 CFR 121.201, NAICS code 517212.

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

[19] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[20] U.S. Census Bureau, 2002 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

[21] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[22] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[23] 47 CFR 1.1162.

[24] 5 U.S.C. 601(5).

[25] *See* Medtronic Petition at i, 16, and Appendix A, at proposed section 95.1601. We note that 47 U.S.C. 307(e)(3) provides that the term ''citizens band radio service'' shall have the meaning given it by the Commission by rule. 47 U.S.C. 307(e)(1) provides that upon determination by the Commission that an authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the citizens band radio service.

are invited to address whether other licensing approaches should be considered and discuss the relative benefits and disadvantages compared to our proposal.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[26]

24. We propose to establish a new Medical Data Service (MEDS) under Part 95 that would encompass all medical devices permitted to operate in the entire 401–406 MHz band. We seek comment on options concerning whether and how the five megahertz of spectrum that would comprise this proposed MEDS band could be divided among the evolving varieties of implanted and body-worn medical transmitters, including low-power, low-duty-cycle (LPLDC) devices without listen-before-talk (LBT).

25. For example, should both implantable and body-worn transmitters be permitted to operate in all, or just selected portions, of the five megahertz of the proposed 401–406 MHz MEDS band? Should the same technical standards that govern the existing MICS center band transmitters be applied uniformly across the entire band? Should an adjustment in the permissible operating power of body-worn transmitters be made to account for difference in body tissue attenuation as compared with implantable devices? Similarly, should LPLDC devices without LBT be permitted to operate throughout the entire five megahertz of the proposed MEDS band or be limited to segments such as the 401–402 MHz and 405–406 wing bands? Why or why not? Commenters should explain the rationale, and corresponding benefits and disadvantages, for whatever approach is recommended. Are there any other factors that should be considered with respect to distinguishing the applicable rules for implantable, body-worn devices, and LPLDC transmitters? Should other types of medical radiocommunication devices be considered for operation in this proposed MEDS band? We especially seek small entity comment on these issues.

*E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

26. None.

Initial Paperwork Reduction Analysis

27. The *Notice of Proposed Rule Making* contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days after the date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ordering Clauses

28. Pursuant to sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307, 316, and 332, the *Notice of Proposed Rule Making and Notice of Inquiry, is adopted.*

29. The Biotronik *Request for Extension of Waiver,* is granted until one year from the effective date of final rules adopted in this proceeding.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Notice of Proposed Rule Making and Notice of Inquiry,* including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in Parts 2 and 95**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–12500 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

[26] *See* 5 U.S.C. 603(c).

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 2 and 25

**[IB Docket No. 06–123; FCC 06–90]**

## Establishment of Policies and Service Rules for the Broadcasting-Satellite Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission proposes application processing and service rules for the 17/24 GHz Broadcasting Satellite Service (BSS). The Commission proposes and/or seeks comment on a number of issues, including: licensing procedures, posting of performance bonds, milestone schedules, limits on pending applications, annual reporting, license terms, replacement satellites, access to the U.S. market from non-U.S. satellites; public interest obligations, copyright and broadcast carriage, equal employment opportunity, geographic service coverage, and emergency alert system participation; use of internationally allocated spectrum by receiving stations located outside the United States; orbital spacing and antenna performance standards; technical requirements for intra-service sharing; other technical requirements, such as reverse band operations, tracking, telemetry, and command operations, polarization, and full frequency re-use requirements; and technical requirements for inter-service sharing in the 17 and 24 GHz bands.

**DATES:** Comments are due on or before October 16, 2006 and reply comments are due on or before November 15, 2006. Public and agency comments on the Initial Paperwork Reduction Act of 1995 (IFRA) analysis are due October 2, 2006.

**ADDRESSES:** You may submit comments, identified by IB Docket No. 06–123, by any of the following methods:

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

• Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• Mail: Joanne Lucanik, Satellite Division, International Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Rm. 6–A660, Washington, DC 20554.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Lucanik (202) 418–0719, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* (NPRM) in IB Docket No. 06–123, FCC 06–90, adopted June 21, 2006 and released on June 23, 2006. The NRPM was subject to an Erratum, released on July 6, 2006. The full text of the NPRM is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.*

Pursuant to the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in the NPRM. The text of the IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

In addition, the Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 2, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

**Paperwork Reduction Act Requirements**

*OMB Control Number:* 3060–XXXX.

*Title:* Service Rules and Policies for the Broadcasting Satellite Service (BSS).

*Form No.:* Not Applicable.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 4 respondents; 24 responses.

*Estimated Time Per Response:* 10 hours.

*Frequency of Response:* On occasion and annual reporting requirements.

*Estimated Total Annual Burden:* 240 hours.

*Estimated Total Annual Costs:* $12,451,700.00.

*Privacy Act Impact Assessment:* Not Applicable.

*Needs and Uses:* The purpose of this new information collection is to address the Paperwork Reduction Act (PRA) requirements proposed in the Commission's Notice of Proposed Rulemaking (FCC 06–90) to establish policies and service rules for the new Broadcasting Satellite Service under IB Docket No. 06–123. In this NPRM, the Commission proposes three new information collection requirements applicable to Broadcasting Satellite Service licensees: (1) Annual reporting requirement on status of space station construction and anticipated launch dates, (2) milestone schedules and (3) performance bonds that are posted within 30 days of the grant of the license.

Without the information collected through the Commission's satellite licensing procedures, we would not be able to determine whether to permit applicants for satellite licenses to provide telecommunications services in the U.S. Therefore, we would be unable to fulfill our statutory responsibilities in accordance with the Communications Act of 1934, as amended; as well as the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

*Summary of Notice of Proposed Rulemaking*

1. With the NPRM, the Federal Communications Commission (Commission) proposes application processing and service rules for the 17/24 GHz Broadcasting Satellite Service (BSS). Under the Commission's rules and the International Telecommunication Union (ITU) Region 2 allocation, the allocation for BSS at 17/24 GHz will become effective on April 1, 2007. In the United States, satellites operating in the 17/24 GHz BSS will downlink in the 17.3–17.7 GHz frequency band and uplink in the 24.75–25.25 GHz frequency band.

2. The Commission proposes and/or seeks comment on procedures for processing applications and establishing service rules for operations in the 17/24 GHz BSS. The Commission seeks comment on the appropriate licensing framework for the 17/24 GHz BSS. The Commission proposes and seeks comment on safeguards against speculation, an annual reporting requirement, license terms, replacement satellites, and operation by non-United States-licensed satellites operators in the 17/24 GHz BSS.

3. The Commission also proposes and seeks comment on public interest and other statutory obligations of licensees in the 17/24 GHz BSS. Included among the statutory obligations are equal employment opportunities, geographic service rules, and participation in the emergency alert system.

4. In the *18 GHz Report and Order*, 15 FCC Rcd at 13475, paras. 95–99, the Commission stopped the domestic allocation to the BSS at 17.7 GHz. Although the international allocation for Region 2 BSS in the space-to-Earth direction extends from 17.3–17.8 GHz, the Commission believed that it was important to keep as much spectrum

available to the terrestrial fixed services as possible, for as long as possible, in order to assist in relocating displaced facilities. In making this decision, the Commission took into account the ubiquitous nature of BSS services which we believed would preclude successful coordination with a terrestrial service that was similarly widely deployed, and the amount of terrestrial fixed spectrum being lost as a result of that proceeding. *See also* 16 FCC Rcd 19808, 19822–23, paras. 30–31 (2001).

5. The Commission now has received several applications seeking authority to launch and operate satellites in the 17.3–17.8 GHz band. DIRECTV, Pegasus, EchoStar and Intelsat all propose to operate their satellites in the full 500 MHz of spectrum from 17.3–17.8 GHz. The intent of this proceeding is to establish service rules for use of the 17/24 GHz BSS allocation that becomes effective on April 1, 2007, so that applicants may have sufficient time to design their systems in a manner that will conform to our rules. Recognizing the significant technical challenges posed by the question of BSS/FS band-sharing at 17.7–17.8 GHz, we believe that this goal would be disserved by engaging in the protracted rulemaking process that would inevitably result. Moreover, although 17/24 GHz BSS applicants seek to use the 17.7–17.8 GHz band, none has provided evidence that terrestrial fixed service spectrum relocation requirements are less demanding than predicted. Nor has any applicant provided a convincing argument that coordination of widely deployed terrestrial services with ubiquitously located 17/24 GHz BSS receivers would be readily feasible. For these reasons, we do not find compelling motivation to reexamine the Commission's earlier decision with regard to BSS use of the 17.7–17.8 GHz band in the United States. Therefore, we do not propose to authorize or to protect the reception of BSS (space-to-Earth) transmissions into the United States and its possessions in the 17.7–17.8 GHz band.

6. We recognize however, that U.S. satellite operators may wish to use the 17.7–17.8 GHz band to provide service to receiving earth stations located within Region 2, but outside of the United States. The operation of 17/24 GHz BSS receiving earth stations outside of the United States and its possessions does not present the same coordination difficulties with regard to U.S.-licensed terrestrial fixed service stations, nor would it hinder the re-location of these services in the 18 GHz band. We propose to permit U.S. operators to use the international allocation to the BSS in the 17.7–17.8 GHz band, but to limit use of that allocation to international service only, *i.e.*, to receiving earth stations located outside of the U.S. and its possessions. The Commission seeks comment on this proposal.

7. The Commission seeks comment on other changes to our rules which might be necessary should we allow use of the 17.7–17.8 GHz band to provide non-U.S. BSS service. We are proposing to permit transmissions in the 17.7–17.8 GHz band only to receiving earth stations located outside of the United States and its possessions. However, we recognize that the footprint of satellite beams serving near-by Region 2 countries could illuminate portions of the United States and that U.S. terrestrial service stations may be subject to interference from such space-to-Earth satellite transmissions, particularly at low elevation angles. Historically, the Commission has adopted power flux density (pfd) limits to protect terrestrial service antennas from interference from co-frequency space station transmissions. At present, neither the Commission's rules nor the ITU define any pfd limits for BSS systems operating in the 17.7–17.8 GHz band. Prior to adoption of the *18 GHz Report and Order* in 2002, § 25.208(c) of the Commission's rules imposed pfd limits for the FSS in the entire 17.7–19.7 GHz band and Article 21 of the ITU Radio Regulations imposes the same pfd limits on the FSS operating in the 17.7–19.7 GHz band in order to protect terrestrial stations. We propose to extend these same pfd limits to the BSS service (space-to-Earth) in the 17.7–17.8 GHz band. We seek comment on this proposal, and ask whether these pfd limits are sufficient to protect U.S. terrestrial operations in the band, or whether some other limits should be adopted. We note that these pfd limits were adopted to facilitate sharing between co-primary FS and FSS services. Recognizing that we do not intend to authorize receipt of (space-to-Earth) BSS transmissions in the United States and its possessions in the 17.7–17.8 GHz band, we ask whether more stringent pfd limits might be appropriate, particularly in areas of the U.S. located farther from the borders.

8. We also seek comment on tracking, telemetry and command (TT&C) operations in the 17.7–17.8 GHz band. Section 25.202(g) of our rules requires that TT&C functions for all U.S. domestic satellites be conducted at either or both edges of the allocated band(s). The Commission has previously recognized that TT&C functions for U.S.-licensed satellites are best performed at facilities located within the United States, and that locating such facilities in a foreign country could adversely affect an operator's ability to maintain control of its spacecraft. Accordingly, we ask how best to accommodate TT&C functions for 17/24 GHz BSS satellites seeking to use the 17.7–17.8 GHz band to provide international service.

9. *Orbital Spacing:* To date the applications we have received from DIRECTV, EchoStar, Pegasus, and Intelsat are to operate GSO satellites in the 17/24 GHz band. Because we envision the service as a GSO service, we are not considering rules for NGSO satellite systems in this proceeding. However, we seek comment on the appropriateness of this approach and ask whether we should allow for the possibility of both GSO and NGSO 17/24 GHz BSS systems. If so, we ask commenters to elaborate on how such GSO/NGSO sharing might be effected, and what additional or different rules might be necessary to accommodate both types of systems in the band.

10. *Minimum Antenna Diameter and Performance Standards:* Because of the inverse relationship between antenna diameter and antenna off-axis discrimination performance, the orbital separation scheme will largely determine the minimum antenna diameter that can be accommodated in the 17/24 GHz BSS band. As the receiving antenna diameter decreases, greater orbital separation is required to compensate for the increase in off-axis interference received from neighboring satellites. However, because antenna off-axis discrimination performance for a given size antenna improves at shorter received-signal wavelengths, comparably-sized 17/24 GHz BSS-band receive-antennas may be able to deliver a quality of service comparable to 12 GHz DBS-band systems, while operating with satellites at smaller orbital separations.

11. Historically, the Commission has opted not to regulate explicitly the diameter or other technical characteristics of receive-only antennas. Rather, the Commission has typically chosen to establish limits on other system characteristics such as power flux density (pfd) levels or orbital spacing and has left the choice of receive-antenna characteristics to the operator with the understanding that receiver size has a bearing on availability, quality of service and the ability to market the service to consumers; however, the operator must then accept any resulting interference from other systems that are operating within the permitted levels. We believe

that this approach has afforded operators maximum technical flexibility, especially considering that earth station receive antenna size is a very important factor to potential consumers of DTH service. However, the Commission also seeks to ensure that U.S.-licensed BSS systems receive sufficient interference protection and that subscribers' receive antennas will work effectively in current and future radio frequency interference environments. In particular, the receive earth station antenna off-axis discrimination performance will affect the amount of interference into BSS receivers from other systems. We note that, in implementing its two-degree spacing policy with respect to the FSS, the Commission has adopted certain earth station antenna performance requirements (*see, e.g.*, 47 CFR 25.209). Accordingly, we request comment on whether the Commission should afford interference protection to 17/24 GHz BSS systems only to the extent that they meet certain receive antenna performance standards. Specifically, we request comment on what type of regulation might be appropriate, such as adopting side-lobe suppression or minimum gain requirements, or some other parameter.

12. *Uplink Power Levels:* In order to implement the two-degree spacing policy for C- and Ku-band FSS satellites, the Commission established rules that define uplink power density limits and antenna performance standards. *See* 47 CFR 25.134, 25.208, 25.209. In combination, these power density limits and antenna performance standards ensure that conforming FSS satellite systems will not emit power at off-axis angles at levels high enough to cause unacceptable interference to adjacent co-frequency satellites spaced at two-degree intervals. Similarly, in the Ka-band the Commission adopted a two-degree blanket licensing requirement that included uplink off-axis equivalent isotropically radiated power (e.i.r.p.) density limits and a single-entry power flux density (pfd) limit in the downlink. *See* 47 CFR 25.138. Successful implementation of any orbital spacing regime for the 17/24 GHz BSS service will likely require that the Commission develop analogous criteria. However, we recognize that in the 17/24 GHz BSS band the choice of orbital spacing will be determined in large measure by the operator's desire to serve its customers with a certain size of receiving antenna, and that 17/24 GHz BSS satellites may operate in an orbital spacing environment with greater than two-degrees of separation. Moreover, we recognize that feeder link earth stations typically operate with large diameter antennas that exhibit good off-axis rejection properties. For these reasons, the problem of off-axis interference into adjacent satellites may not be as significant in the 17/24 GHz band as it is in the FSS bands. Accordingly, we seek comment on our assumption regarding the need to establish off-axis uplink power limits for this service. In addition, the Commission's rules provide for routine licensing of FSS earth stations in situations where (in combination with the antenna performance standards of § 25.209) specific minimum equivalent antenna diameters and maximum uplink power limits are met. *See* 47 CFR 25.211(d) and 25.212(c)–(d). We seek comment on whether analogous criteria might be developed for expedited licensing of feeder link earth stations in the 24 GHz band, and if so, what equivalent antenna diameters and power limits, or other technical characteristics might be appropriate.

13. We recognize that absent a clearly defined orbital separation, the interference contribution resulting from uplink transmissions to adjacent satellites cannot be fully determined. However, we seek comment on whether the proposed clear-sky earth station antenna off-axis e.i.r.p. density values might be appropriate down to some minimum orbital separation value, and whether they would provide sufficient protection to adjacent GSO BSS satellites. We have chosen to propose accommodating the highest power level proposed by an applicant, but we seek comment on whether some mid-range or other value might be preferable, or whether a higher level might be better to allow for future higher-power systems. We seek further comment on whether there are other factors that should be considered when determining an off-axis e.i.r.p. density value, such as the potential for interference to/from other services sharing the band, including 24 GHz FS systems, or the radiolocation service. We also ask what form an uplink power density rule should take, whether it is most appropriate to specify some input power or power density level in combination with the antenna performance requirements of § 25.209, or to specify a composite curve of off-axis e.i.r.p. density levels as is done for blanket licensing of Ka-band GSO FSS earth stations. *See* 47 CFR 25.138(a).

14. We anticipate that some future systems may wish to operate at higher e.i.r.p. density values than those proposed at this time. Our current FSS service rules provide a mechanism for licensing such non-conforming systems. *See* 47 CFR 25.220 and 25.138(b), (c). These rules place the burden on the applicant to provide a technical showing to the Commission, and to coordinate its non-conforming operations with adjacent operators. We propose to adopt a similar approach to accommodate satellite systems in the 17/24 GHz BSS band wishing to uplink with higher power levels. We seek comment on this issue and ask whether this approach is appropriate or whether different rules should be adopted. Non-conforming FSS operators are required to coordinate with adjacent satellites at 2°, 4° and 6° away. *See* 47 CFR 25.220 and 25.138(c). Recognizing that 17/24 GHz BSS satellites may not be operating in a two-degree spacing environment, we seek comment on the angular distance over which coordination should be required.

15. The uplink off-axis e.i.r.p. density limits discussed above are for clear-sky operations only. GSO satellites operating in the 24 GHz band can suffer significant signal attenuation in the presence of precipitation and may likely need to transmit at higher powers during such weather conditions in order to overcome the effects of rain fade. Applicants have indicated a need to employ uplink adaptive power control to provide transmit power levels sufficient to meet the desired link performance during unfavorable weather events, while simultaneously ensuring that threshold power levels are not excessive at other times. In the *28 GHz First Report and Order,* we recognized that uplink power control limits would facilitate operations in the 27.5–30.0 GHz band, and we amended § 25.204 of our rules to require that all Ka-band FSS earth stations employ adaptive uplink power control or other methods of fade compensation. In the *18 GHz Report and Order,* we adopted rules for Ka-band FSS earth stations employing uplink power control which limit transmissions during conditions of uplink fading to 20 dB above those permitted under clear-sky conditions. *See* 47 CFR 25.138(a)(5). We seek comment on whether it is necessary to adopt a rule requiring 17/24 GHz BSS feeder link earth stations to employ uplink power control, similar to the FSS requirement of § 25.204. We also seek comment on what values or conditions might be applied to the use of 17/24 GHz BSS uplink adaptive power control, including: a minimum signal attenuation required before uplink transmit power may be increased; an upper limit on permissible transmit power increase; an accuracy

requirement over the range of path attenuations; or other possible parameters such as the control-loop response time or limits on system overshoot.

16. *Downlink Power Limits:* The downlink power levels transmitted by adjacent co-frequency satellites, in combination with the sidelobe performance characteristics of the receiving earth station antenna, will determine the carrier-to-interference ratio that an operator experiences at the receive antenna as a result of adjacent satellite interference. At present, neither the Commission nor the ITU have established power flux density requirements or other downlink power limits for BSS systems operating in the 17.3–17.7 GHz band. Article 21 of the ITU Radio Regulations does define pfd limits for the FSS in the 17.7–17.8 GHz band in its Table 21–4.

17. In other frequency bands, the Commission has frequently adopted downlink power limits for space stations transmissions in order to facilitate both inter-service and intra-service sharing. For example, our rules define power flux density limits in the 4/6 GHz and 20/30 GHz FSS bands in § 25.208, and impose additional pfd requirements for blanket licensing of Ka-band earth stations in § 25.137(a)(6). However, in other bands, no downlink power limits exist. We note that one advantage of imposing a downlink power limit is to establish a relatively homogeneous transmitting environment, and to ensure that established receiving antennas are not subject to unforeseen levels of adjacent satellite interference, particularly as newer generation satellites are brought into service. Moreover, application of downlink power limits may also influence the ability of 17/24 GHz BSS systems to operate in the vicinity of co-frequency receiving DBS satellites. However, adopting such limits can to some extent restrict the ability of future satellites to increase their power levels in response to improvements in technology, or to compensate for interference from other sources (e.g., foreign satellites or adjacent-band radars).

18. A review of the 17/24 GHz BSS filings submitted to the Commission, indicates that applicants plan to operate digital systems with downlink maximum e.i.r.p. levels that range between 58.6 dBW and 64.7 dBW. It appears that worst case pfd levels are less than $-117$ dBW/MHz/m$^2$ for all systems, with the exception of certain Intelsat spot beams that may have maximum saturated pfd levels of $-115$ dBW/MHz/m$^2$ at the Earth's surface. Accordingly, we seek comment on whether the Commission should adopt pfd or other downlink power level values in the 17.3–17.7 GHz band. We ask what level of downlink power would be appropriate, and in particular whether the ITU's FSS pfd limits, with an upper limit of $-115$ dBW/MHz/m$^2$, should be applied in the 17.3–17.7 GHz band. We ask whether a different, perhaps higher power level is preferable in order to provide for future generation satellites, or to compensate for anticipated interference sources. The present operating downlink transmitted power levels proposed by applicants assume an orbital spacing environment of either 4-degrees or 4.5-degrees. We seek comment on what pfd limit would be preferable if the Commission were to establish an orbital spacing regime different from either 4-degrees or 4.5-degrees.

19. *Reverse Band Operations:* When the Region 2 BSS allocation at 17.3–17.8 GHz becomes effective in 2007, it will be shared with the current 17.3–17.8 GHz DBS feeder-link allocation in the Earth-to-space direction. This operating scenario, in which the same frequency band is used for both Earth-to-space and space-to-Earth transmissions, is known as ''reverse band'' and results in additional interference paths which are different from those found in a conventional GSO satellite sharing situation. In the typical GSO satellite sharing scenario, interference paths occur between the earth stations of one system and the satellites of another, and vice versa. In such cases, co-frequency sharing is facilitated primarily through antenna off-axis discrimination at each end of the interference path, in combination with limits on spatial proximity (orbital separation) and transmission power. The reverse-band sharing scenario is different in that two new and distinct interference paths occur: (1) Between the earth stations of different systems; and (2) between the space stations of different systems. In effect, reverse-band operations create two additional interference paths: An earth station-into-earth station path (ground path), and a space station-into-space station path (space path).

20. *Ground Path Interference:* Ground path interference (here, the terms ''DBS'' or ''DBS earth station'' refer to earth stations that are DBS feeder links) will occur when the signals from transmitting DBS feeder-link earth stations operating in the 17.3–17.7 GHz band are detected at the receiving earth stations of 17/24 GHz BSS subscribers. This interference situation will be the most severe in areas surrounding the DBS feeder uplink stations. In addition, 17/24 GHz BSS operators who choose to co-locate their TT&C earth stations with DBS TT&C earth stations systems may experience difficulty in receiving the downlinked telemetry signal from the 17/24 GHz BSS spacecraft.

21. At present there are a relatively small number of DBS feeder-link earth stations. If the current situation were to remain unchanged, the ground path interference problem into 17/24 GHz BSS subscriber antennas might not pose a significant problem. However, we recognize that local programming is being uplinked from a growing number of metropolitan areas. We must anticipate that DBS feeder-link earth stations that transmit in the Earth-to-space direction may become increasingly common in populated areas, thereby escalating the potential for interference into 17/24 GHz BSS subscriber antennas. In addition, future entrants such as short-spaced DBS systems, or non-U.S. DBS satellites serving the U.S. market, could result in the deployment of an even greater number of feeder-link earth stations at multiple sites within the United States. The interference problem may be further exacerbated by the proliferation of small-diameter 17/24 GHz BSS subscriber receiving antennas with relatively poor off-axis discrimination properties.

22. There is no procedure established in the Commission's rules regarding coordination of co-frequency, DBS feeder-link satellite earth stations with BSS subscriber terminals. Instead, we note that Appendix 7 of the ITU Radio Regulations describes a procedure for determining the coordination area for an earth station transmitting in a frequency band allocated to space services in both Earth-to-space and space-to-Earth directions. In other sharing situations, the Commission has successfully relied upon the ITU Appendix 7 coordination methodologies to effect coordination between the co-frequency earth stations of different services. Specifically, § 25.203 in combination with § 25.251 of our rules define a mechanism for coordination between terrestrial microwave stations and satellite earth stations that share frequency bands with equal rights. This mechanism is based upon the procedures set forth in Appendix 7 of the ITU Radio Regulations. Similarly, in the case of coordination between co-frequency reverse-band DBS feeder-link and BSS receiving earth stations operating in the 17.3–17.7 GHz band, we propose to make use of the coordination methodology defined in Annex 3 of Appendix 7 of the ITU Radio Regulations. We seek comment on this proposal and ask whether this

coordination methodology may be appropriately applied in this situation.

23. We also seek comment on the types of technical information DBS feeder-link earth station operators should make available to 17/24 GHz BSS operators for the purposes of earth station coordination.

24. In addition, we envision that both the DBS feeder links and 17/24 GHz BSS services will be deploying new earth stations over time, so that new stations of one service will continually be established among existing stations from the other. The Commission wants to ensure that U.S.-licensed 17/24 GHz BSS systems receive sufficient interference protection and that subscribers' receive antennas will work effectively in both current and future radio frequency interference environments. However, we are also committed to preserving the prospect for growth and expansion of the DBS service, and to providing for future DBS market entrants. Therefore, we seek to adopt service rules that achieve an appropriate balance between accommodating both present and future DBS feeder-link operations and ensuring protection of 17/24 GHz BBS receiving systems from interference.

25. In the *MVDDS Second R&O,* 17 FCC Rcd 9614 (2002), the Commission addressed a frequency sharing situation that presented ground path interference issues and temporal build-out of interspersed earth stations, similar to those we envision resulting from reverse band satellite operations in the 17.3–17.7 GHz band. In the 12 GHz band, two co-primary, co-frequency services sought to operate in a sharing scenario where ubiquitous and ongoing deployment of stations from both services was anticipated. The Commission recognized that the incumbent DBS receive-only antennas were subject to interference from the introduction of transmitting MVDDS stations. In the *MVDDS Second R&O,* the Commission concluded that careful MVDDS system design and the use of various mitigation techniques could achieve successful sharing of the 12 GHz frequency band by both services. To accomplish this goal, the Commission adopted *inter alia* a coordination procedure that requires that an MVDDS operator entering a market where DBS receivers are already established must satisfy certain requirements in order to protect these customers. 47 CFR 101.1440(d). In addition, a mechanism is established for information exchange between the operators of both services, in particular to take into account recently acquired DBS customers. (*see* 17 FCC Rcd at 9652, para. 88) Once the time period prescribed for this information exchange has passed, any new DBS receive antennas must be installed in a manner to avoid interference from the MVDDS signal. These later-installed DBS earth stations have no right of complaint against the notified MVDDS transmitting antenna.

26. We seek comment on whether we should adopt a similar approach to sharing between DBS feeder-link earth stations and 17/24 GHz BSS receiving earth stations. Under such an approach, DBS operators planning new feeder-link earth stations would be required to provide the technical information discussed above to 17/24 GHz BSS licensees, at least 90 days prior to commencing operations of the new DBS feeder-link earth station. Within 30 days after receipt of the new DBS feeder-link earth station technical information, the 17/24 GHz BSS licensees would be required to provide the DBS feeder-link earth station operator with a list of potentially-affected 17/24 GHz BSS customer locations within the coordination area described above. Before beginning operations, the new DBS feeder-link earth station operator would be required to take into account these 17/24 GHz BSS customers and to ensure that its operations do not cause them harmful interference. Once the 30-day time period prescribed for this information exchange has passed, any new 17/24 GHz BSS receiving earth stations would be required to accept or mitigate any interference from the DBS feeder-link transmissions. These later-installed 17/24 GHz BSS receiving earth stations would have no right of complaint against the new DBS feeder-link transmitting earth station. We seek comment on this proposal. We recognize that there may be reluctance on the part of 17/24 GHz BSS operators to reveal their customer data, particularly to another DBS or BSS operator, and we seek comment on alternate approaches to coordinating DBS feeder-link and 17/24 GHz BSS earth station operations. We also ask whether some different approach would better facilitate sharing in the 17/24 GHz band.

27. In the *MVDDS Second R&O,* the Commission took additional steps to ensure successful sharing in the 12 GHz band and adopted various equivalent power flux density (epfd) and power density limits for MVDDS systems, as well as rules governing their application. *See MVDDS Second R&O,* 17 FCC Rcd at 9641–9642, para. 68. The Commission's existing rules do not specify transmitting epfd or of-axis e.i.r.p. density limits for DBS feeder-link earth stations, except in the band 17.7–17.8 GHz, which is shared co-equally with terrestrial services. Interference into 17/24 GHz BSS receivers could be reduced if the e.i.r.p. levels emitted towards the horizon by DBS feeder link antennas were minimized. Limiting DBS feeder link off-axis transmit power levels may facilitate co-existence of 17/24 GHz BSS subscriber earth stations and DBS feeder link earth stations, while decreasing the coordination burden on both services. Accordingly, we ask whether off-axis e.i.r.p. density or other transmitting power limits should be applied to DBS feeder-link bands in order to protect 17/24 GHz BSS receiving earth stations from interference.

28. Section 25.204(b) of the Commission's rules places limits on earth station e.i.r.p. in bands above 15 GHz shared coequally with terrestrial radiocommunication services, in order to facilitate sharing with these services. This rule was not intended to facilitate sharing among DBS and BSS earth stations, and it is applicable to DBS feeder link earth stations only in the band segment 17.7–17.8 GHz that is shared with terrestrial services. We seek comment on whether the Commission should extend this requirement to DBS feeder link earth stations operating in the entire 17.3–17.8 GHz band or adopt some other, more stringent off-axis e.i.r.p. requirement. We also seek comment on whether a different approach, such as requiring DBS feeder link antenna shielding, would be more appropriate. Similarly, we request comment on whether the Commission should afford interference protection to 17/24 GHz BSS systems only to the extent that they meet certain receive antenna performance standards. Specifically, we request comment on what type of regulation, if any, would be appropriate, such as adopting antenna off-axis discrimination requirements or minimum gain requirements. We seek comment on whether the e.i.r.p density limits of § 25.204 (b)–(e) would be sufficient to protect 17/24 GHz BSS earth stations if applied to the 17.3–17.7 GHz band, or whether some other limits would be more appropriate. We seek comment on whether it is necessary to adopt another approach, such as stipulating epfd limits, in order to facilitate coordination between DBS feeder-link earth stations and 17/24 GHz subscriber receivers, and if so, which methodology should be used in determining such limits. We also seek comment on whether we should impose any additional requirements on either DBS feeder-link earth station operators

or on 17/24 GHz BSS operators in order to mitigate interference into 17/24 GHz BSS subscriber receiving antennas.

29. *Ground Path Interference Into BSS Telemetry Earth Stations:* Ground path interference may also occur between transmitting DBS feeder-links and the receiving TT&C stations of 17/24 GHz BSS systems that choose to co-locate their TT&C earth stations at existing DBS feeder-link earth station sites. Choice of facility site is a system design parameter that is under the control of the operator, and does not necessarily require a Commission action to remedy. Accordingly, we seek comment on whether the Commission should adopt requirements to guard against such interference scenarios.

30. We propose to require earth station applicants planning to co-locate their 17/24 GHz BSS TT&C stations with DBS feeder-links earth stations to make a technical showing to the Commission demonstrating their ability to maintain sufficient margin in their telemetry links in the presence of the interfering DBS signal. Additionally, we propose to require DBS feeder link earth station applicants planning to co-locate with their 17/24 GHz BSS telemetry earth stations to make a similar technical showing to the Commission. We seek comment on this proposal and ask what parameters would be appropriate in such a showing. In addition, we seek comment on other interference measures we might consider such as mandating a level of equipment performance (*e.g.*, filter rejection).

31. *Increased Flexibility of Spectrum:* Footnote NG 167 of the Domestic Table of Frequency Allocations (*see* 15 FCC Rcd 7207 (1999)) limits use of the FSS allocation (Earth-to-space) in the 24.75–25.25 GHz band to use by feeder links for the BSS operating in the band 17.3–17.7 GHz. In the *18 GHz Report & Order,* we noted that, although we were allocating 500 megahertz for BSS feeder links at 24.75–25.25 GHz for 400 megahertz of BSS uplinks at 17.3–17.7 GHz, we declined to reduce the amount of spectrum available for feeder links for the BSS. We stated that the flexibility that this additional 100 MHz of feeder link spectrum afforded might prove useful to 17/24 GHz BSS operators in some situations including occasional difficulties that might be encountered during coordination. The ability to use spectrum in the 24 GHz band for feeder-links operating with other BSS services, such as DBS, might afford operators increased flexibility in system design and spectrum use. Providing this increased flexibility might also assist operators in designing their systems so as to avoid ground path interference problems associated with reverse band operations in the 17.3–17.8 GHz band. The benefit of alternative feeder link spectrum might be particularly useful in situations where DBS feeder-link earth stations must be located in populated areas with a high density of 17/24 GHz BSS receiving antennas, or when 17/24 GHz BSS telemetry receiving facilities are close by. We propose to modify footnote NG167 of the Domestic Table of Frequency Allocations in order to permit use of the 24.75–25.25 GHz FSS allocation (Earth-to-space) by feeder links operating with the BSS in frequency bands other than 17 GHz, *e.g.*, the 12 GHz DBS band. We seek comment on this proposal.

32. The 24.75–25.05 GHz band is shared on a co-primary basis with the radionavigation service and the 25.05–25.25 GHz band is similarly shared on a co-primary basis with the fixed service. Permitting migration of BSS feeder link operations from other bands (such as 17.3–17.7 GHz) into the 24 GHz band could place an increased burden on these two services, and may hinder their ability to operate or to deploy additional stations. General requirements for sharing with the radionavigation service and the fixed service in the 24 GHz band are discussed in paragraphs 91–93 of the *NPRM.* However, we seek specific comment on any impact to these other co-primary services from our proposal to permit more flexible use of the 24 GHz band by BSS feeder links. In the *18 GHz Report & Order,* we noted our belief that the feasibility of the sharing between these 17/24 GHz BSS feeder links and the fixed service at 24 GHz is based in part on the limited number of expected 17/24 GHz BSS feeder links. We ask whether these additional feeder link operations can be accommodated in the 24.75–25.25 GHz band, or whether they will unduly restrict operation and deployment of either new radionavigation or fixed service systems. We ask whether our existing FSS/FS coordination procedures set forth in § 25.203 of the Commission's rules are sufficient to facilitate co-existence of additional BSS feeder link earth stations with the 24 GHz Fixed Service, or whether some additional requirement(s) should be imposed.

33. *Space Path Interference:* Space path interference will occur when the signals from transmitting 17/24 GHz BSS satellites are detected by the receiving antennas of DBS satellites. The amount of interference received by the victim DBS satellite will depend on the specific orientation between the transmitting and receiving satellites, the extent of physical separation, the transmit power (e.i.r.p.) levels, and the off-axis gain discriminations of both transmitting and receiving antennas on the adjacent satellites. The problem is expected to be particularly problematic when satellites are nominally co-located, *i.e.*, a receiving DBS satellite is located at the same nominal GSO orbital longitude as a transmitting 17/24 GHz BSS satellite.

34. Recognizing the significant difficulties in preventing harmful interference in the case of co-clustered satellites, we ask whether transmitting 17/24 GHz BSS satellites should be precluded from locating in the same cluster with receiving *co-frequency* DBS satellites. We seek comment on this issue. We also ask whether co-clustering of 17/24 GHz BSS and receiving *co-frequency* DBS satellites might be possible in instances where both spacecraft are controlled by the same operator. However, we also seek comment on methods we might employ to facilitate co-location, or co-clustering of DBS and 17/24 GHz BSS satellites.

35. We seek further comment on the feasibility in general of locating transmitting 17/24 GHz BSS satellites at close distances (i.e., within the same cluster, or at nearby adjacent locations) as receiving DBS satellites operating with 17 GHz feeder-links. We ask whether there is a minimum separation distance that we should mandate for the two co-frequency satellites, and if so, what that separation distance should be. We also ask whether we should impose an off-axis antenna discrimination requirement on satellites in the 17/24 GHz BSS service, the DBS service, or both, and if so what the requirement(s) should be. We ask whether we should impose either an absolute e.i.r.p. limit on transmitting BSS satellites, and if so, what that value might be, or whether an e.i.r.p. mask might be more appropriate. If the latter, we seek comment on the angular range over which such a mask should be applied, and what power limits would be most appropriate at different angular values. Finally, we seek comment on whether there are any other requirements we should consider in order to prevent reverse-band adjacent satellite interference in the 17 GHz band. Specifically, we ask applicants how they plan to address the problem of space path interference with the co-located satellites they have proposed.

36. Space path interference from transmitting 17/24 GHz BSS satellites has the potential to cause loss of the telecommand signal at the receiving DBS satellite. As in the ground path telemetry case, we are aware that interference into TT&C systems can

present a serious problem due to the potential loss of satellite control, and we seek comment on what requirements the Commission should adopt to guard against such interference scenarios. As in the ground path case, we propose to require space station applicants planning to co-locate their 17/24 GHz BSS space stations within cluster locations occupied by DBS space stations to make a technical showing to the Commission demonstrating their ability to sufficiently minimize interference into nearby DBS systems, such that adequate margin is maintained in the DBS telecommand links in the presence of the interfering BSS signal. Similarly, we will ask DBS operators planning to locate their satellites at an orbital location already occupied by a transmitting 17/24 GHz BSS satellite to make a technical showing to the Commission demonstrating how they plan to maintain sufficient margin in their telecommand links in the presence of the interfering BSS signal. We seek comment on this proposal and ask what parameters would be appropriate in such a showing.

37. *Other Technical Requirements:* We note that tracking, telemetry, and command (TT&C) issues have been raised in some of the 17/24 GHz applications filed with the Commission, and below, seek comment on need to establish requirements for these activities. Also, we seek comment on the need for polarization and frequency re-use requirements. In addition to these issues, we invite parties to comment on other technical matters that the Commission should address in this rulemaking, and seek comment on any further changes to our rules that should be adopted for 17/24 GHz BSS systems.

38. *Technical Requirements for Inter-Service Operations*—Sharing in the 24 GHz Band: In 1997, the Commission modified the Domestic Table of Frequency Allocations to provide a primary allocation in the frequency band 25.05–25.25 GHz to support the 24 GHz Fixed Service, formerly known as the Digital Electronic Messaging Service (DEMS) (See, 15 FCC Rcd 3471 (1997)). The band is now allocated on a co-primary basis to both the FS and to the FSS (Earth-to-space). Several 24 GHz FS systems have already been licensed and we must therefore consider the likelihood that additional systems will be deployed in the future. The potential exists for 17/24 GHz BSS feeder-link earth stations operating in the 25.05–25.25 GHz band to interfere with existing and future 24 GHz FS hub and user stations that operate in the same frequency band. When we adopted this shared allocation at 24 GHz, we stressed that while the full extent of the interference was unknown at that time, our belief in the feasibility of sharing was based on limitations on the number of expected 17/24 GHz BSS feeder link facilities and on the fact that potential interference to the 24 GHz service would be limited to hub stations. It was noted that the rules relevant to the 24 GHz service are subject to the outcome of the 24 GHz service rules proceeding. (*See* 15 FCC Rcd at 13479, para. 105). We noted that the successful implementation of this allocation would require the development of sharing criteria that will be considered in a future rulemaking. In light of the proposed expansion in this band for 12 GHz BSS feeder links in the *NPRM* and the nature of the 24 GHz service, we seek to develop sharing criteria that would assure successful implementation of BSS feeder links and the 24 GHz service and request comment on what these criteria should be. Accordingly, we request comment on the feasibility of operating BSS feeder-links in this band on a co-frequency basis with 24 GHz FS systems and whether existing power levels and coordination procedures are sufficient given that 24 GHz FS systems have been licensed by geographic area and are not required to file site specific data.

39. In Region 2, the International Table of Frequency Allocations provides only the FSS with primary status in the frequency band 24.75–25.05 GHz. In the Domestic Table of frequency allocations however, primary status is shared by both the FSS and the radionavigation service. (*See* 47 CFR 2.106). At this time we are aware of no operational radionavigation systems in the band. However, it is not inconceivable that future radionavigation systems might be deployed. Furthermore, we are aware of no specific sharing criteria or rules governing co-frequency operation of FSS and radionavigation systems. We seek comment on the feasibility of operating BSS feeder-links (Earth-to-space) in this band on a co-primary basis with potential future radionavigation systems. We seek comment on what are the most likely interference scenarios, and ask what measures might best provide for future operation of both services. We ask whether any changes to our rules such as power limits, coordination requirements, or antenna performance requirements might be considered in order to minimize inter-service interference in the 24.75–25.05 GHz band. We seek comment on technical or operational measures that might be adopted by either satellite system operators or by radionavigation system operators in order to facilitate co-frequency operation of these two services.

40. *Sharing in the 17GHz Band:* In the Domestic table of Frequency Allocations, the Radiolocation Service is allocated use of the 15.7–17.3 GHz band on a primary basis for U.S. Government systems. (*See* 47 CFR 2.106). Military services are the largest users of the band and have a considerable investment in radiolocation operations in this frequency range, which include a large number of radar systems that perform ground-mapping, terrain-following maritime and target-identification functions. Numerous high-powered synthetic aperture radars (SARs) operate near the band edge adjacent to 17.3 GHz. At present, these SARs are largely airborne, and are employed primarily for ground mapping and detection of airborne objects. The National Telecommunications and Information Administration (NTIA) has stated that future radar systems are likely to resemble existing radars, including the capability to operate differently in different azimuth and elevation sectors, and that future designs may seek to operate in a wide band extending to the edge of the authorized allocation. Future radar systems will likely employ electronically-steerable antennas, and the NTIA maintains that the introduction of newer phase-steered radars could facilitate electromagnetic compatibility in some circumstances. In addition, newer radar systems are expected to have average-power capabilities at least as high as those of current systems, although the NTIA expects that future designs will strive to reduce wideband noise emissions through the use of solid-state transmitter/antenna systems. These would employ longer pulse transmissions with substantially higher duty cycles, but probably at lower peak power levels, as compared to tube-type radar transmitters.

41. The NTIA has provided the Commission with information concerning technical and operating characteristics of certain adjacent-band radiolocation systems that it considers likely to impact 17/24 GHz BSS receiving earth stations and sufficient for general calculations to asses the compatibility between these radars and BSS systems. The technical characteristics of the radiolocation systems operating in the 15.7–17.3 GHz band are provided in Appendix C of the NRPM. The NTIA has also identified two interference coupling scenarios that it believes are likely to exist between radiolocation systems and BSS receiving

antennas in the 17 GHz band: earth station receiver front-end overload and out-of-band interference from high-power pulsed emissions. With regard to adjacent band interference due to high power pulsed emissions, the NTIA cites measurements that it performed on a 4 GHz digital earth station receiver that employed error correction signal processing. However, as the NTIA also notes, the applicability of these results to 17 GHz systems requires further study. Accordingly, we seek comment on the interference scenarios that are most likely to be encountered between adjacent-band radiolocation systems and BSS receiving antennas, and on the general applicability of the NTIA's findings. Specifically, we ask what differences in 17/24 GHz BSS receiver design and signal processing should be taken into account when assessing interference from adjacent-band radiolocation systems. We also ask 17/24 GHz BSS operators for comment on their systems' sensitivity to unwanted adjacent-band emissions, and on the level of protection they may require. We also seek comment on what measures 17/24 GHz BSS operators might adopt in order to mitigate such interference.

42. The Commission's rules do not establish unwanted emission limits for radiolocation systems operating in the 15.7–17.3 GHz band. Appendix 3 of the ITU Radio Regulations defines limits for an attenuation value used to calculate maximum permitted power levels of unwanted emissions in the spurious domain in Table II of § II. For the Radiolocation Service this attenuation below the radiated emission power level is defined as $43 + 10\mathrm{Log}_{10}(\mathrm{PEP})$, where PEP is the peak envelope power in watts. We seek comment on the suitability of this value to protect 17/24 GHz BSS receivers from interference caused by unwanted emissions from adjacent-band radars.

43. In addition, the band 17.3–17.7 GHz is allocated on a secondary basis to the Radiolocation Service for use by Federal Government systems. Numerous types of radiolocation stations have been operated in this band, including ship, ground and airborne equipment. There may be future radiolocations systems that seek to operate in this spectrum on a secondary basis, and the potential for interference into 17/24 GHz BSS subscriber receiving antennas exists. We intend to ensure that 17/24 GHz BSS receivers are adequately protected. However, the Commission is also committed to encouraging efficient use of spectrum whenever possible. Accordingly, we seek comment on approaches we might adopt to accommodate future secondary radiolocation operations in this band. We ask what types of interference scenarios may be anticipated and what criteria might be adopted to ensure protection of BSS systems while allowing for future secondary operation of radiolocation systems in the 17.3–17.7 GHz band. We also ask 17/24 GHz BSS operators to address the level of protection required for their receiving earth stations and whether 17/24 GHz BSS and secondary radiolocation services could co-exist if appropriate protection criteria were in place. Finally, we note that Footnote US259 to the United States Table of Frequency Allocations requires that stations in the radiolocation service in the 17.3–17.7 GHz band be restricted to operating powers of less than 51 dBW e.i.r.p. after feeder-link stations for the broadcasting-satellite service are authorized and brought into use. (*See* 47 CFR 2.106, footnote US259). This requirement was developed to protect GSO satellites operating with feeder-link transmissions defined by the Region 2 planned bands, and was not designed with protection of small-diameter 17/24 GHz BSS receiving earth stations in mind. Nonetheless, we seek comment on whether this restriction is adequate to protect 17/24 GHz BSS subscriber earth stations from harmful interference caused by transmitting radiolocation systems.

44. The allocation to the radiolocation service is secondary relative to the BSS in the 17.3–17.7 GHz band. Accordingly, secondary radiolocation stations are precluded from causing harmful interference to the stations of a primary service such as the 17/24 GHz BSS. (*See* 47 CFR 2.105(c)(2)(i)). However, we recognize that Federal radiolocation systems are now operating in this band and have been in operation for some time. Further, in its March 29, 2000 letter to the Commission, NTIA stated that radiolocation systems continuing to operate in the 17.3–17.7 GHz band after April 1, 2007 may have to be accommodated, notwithstanding their allocation status with respect to BSS stations. Recently, NTIA again noted that it anticipates continued operation of Federal radiolocation systems in certain portions of the 17.3–17.7 GHz band, in a limited number of geographic areas after April 1, 2007. The Commission is committed to protecting 17/24 GHz BSS consumers from harmful interference. However we also wish to accommodate national defense interests and appreciate the Defense Department's need to continue operating a limited number of existing radars in the 17.3–17.7 GHz band after April 1, 2007. Accordingly, we seek comment on what methods or criteria might be adopted to accommodate continued operation of these currently operating Federal radiolocation systems. Specifically, we seek comment on the typical interference scenarios that could occur between receiving 17/24 GHz BSS earth stations and existing Federal radiolocation systems. We ask whether case-by-case coordination or some other approach might best permit continued operation of Federal radiolocation systems in portions of the 17.3–17.7 GHz band following the introduction of 17/24 GHz BSS systems after April 1, 2007.

**Ex Parte Presentations**

45. The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules as well.

**Paperwork Reduction Act**

46. The NPRM contains proposed new and modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days from the date of publication of the NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the

information collection burden for small business concerns with fewer than 25 employees.''

47. A copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

**Initial Regulatory Flexibility Analysis**

48. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this item, the Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-Directionally in the 17.3–17.8 GHz Frequency Band, Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 106 of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposed Rules*

49. In the NPRM the Commission makes proposals and seeks comment on service rules that will apply to U.S. licensees authorized to operate in the 17/24 GHz BSS band. Our objective in this proceeding is to promote prompt commencement of services in the 17/24 GHz BSS band. This newly allocated band is expected to introduce a new generation of broadband services to the public, providing a mix of local and domestic video, audio, data, video-on-demand, and multimedia services to residential and business subscribers in the United States. As discussed in greater detail below, the Commission is provisionally considering a rulemaking which proposes rules and procedures for operation in the 17/24 GHz BSS band, including requirements for licensing, service obligations, orbital spacing, adjacent band operations, reverse band operations, and shared band operations. Potential interference from primary adjacent-band radiolocation systems and in-band secondary radiolocation systems is also addressed. In addition, the *NPRM* also considers proposals for use of the 17.7–17.8 GHz BSS spectrum for provision of international services outside the United States.

50. The Commission is provisionally considering whether to apply the processing rules and requirements set forth in the *Space Station Licensing Reform Orders* to the 17/24 GHz BSS or whether to adopt another licensing mechanism, such as competitive bidding. If the Commission decides to apply the *Space Station Licensing Reform* framework, it is provisionally considering that the 17/24 GHz BSS will be classified as a ''GSO-like'' service and therefore a ''first-come, first-served'' licensing framework will apply to the service. Under this processing option, the Commission is considering applying the package of safeguards that are contained within the first-come, first-served processing scheme. These safeguards include a requirement that all GSO-like applicants awarded a license under this procedure to post a $3 million performance bond with the Commission within 30 days of license grant. They also require licensees to construct and launch the satellite consistent with a specified milestone schedule. If the licensee fails to meet an implementation milestone, the license becomes null and void and the bond is executed. The rules also limit applicants to a total of five pending applications and licenses for unbuilt satellites in a specific frequency band at any one time. In addition, the Commission is considering making 17/24 GHz BSS licensees subject to the same annual reporting requirements as most of our current space station licensees are subject to. These reports include, among other things, the status of space station construction and anticipated launch dates.

51. The Commission is also provisionally considering the adoption of a ten-year license term for all non-broadcast 17/24 GHz BSS licensees and an eight-year license term for 17/24 GHz BSS satellites that will operate as broadcast facilities. In addition, the Commission is provisionally considering the adoption of the grant-stamp procedure to process unopposed replacement 17/24 GHz BSS applications with technical characteristics consistent with those of the satellite to be retired.

52. Regarding non-U.S.-licensed satellite operators, the Commission is provisionally considering to evaluate requests for U.S. access by foreign-licensed 17/24 GHz BSS systems on a service-specific basis consistent with the framework established in the 1997 *DISCO II Order.* Thus, if this approach is adopted, in cases where systems licensed by World Trade Organization (WTO)-member countries seek to provide FSS to U.S. customers from their 17/24 GHz BSS systems, we will presume that entry will further competition. In cases where non-WTO-member countries seek to use these systems to serve the United States or where WTO-member countries seek to provide services such as DTH and DBS over 17/24 GHz BSS systems, we will apply the effective competitive opportunities test (ECO–SAT) to ensure that entry will not distort competition in the U.S market.

53. The Commission is also provisionally considering whether 17/24 GHz BSS licensees should be subject to public interest obligations, such as those currently imposed on providers of direct broadcast satellite services. Under these obligations, these providers are required to meet certain political broadcast requirements, compliance with children's television advertising limits, and to set aside four percent of channel capacity for noncommercial, educational or informational programming. Also, the Commission is provisionally considering rules that would result in the equal employment opportunity requirements set forth in Part 76 of the Commission's rules being applied to 17/24 GHz BSS licensees. In addition, the Commission is provisionally considering adopting rules that would require 17/24 GHz BSS licensees to provide service to Alaska and Hawaii where such service is technically feasible from the authorized orbit location. In addition, the Commission is provisionally considering applying EAS requirements on 17/24 GHz BSS operators.

54. The Commission is also provisionally considering rules that may apportion a specific frequency band for tracking, telemetry and command operations for 17/24 GHz BSS satellites. Also, the Commission is provisionally considering the adoption of rules for orbital spacing for 17/24 GHz BSS satellites.

55. The Commission is also provisionally considering rules

regarding adjacent band operations, reverse band operations, and shared band operations. If adopted, these rules would: (a) Require Direct Broadcast Satellite (DBS) service applicants seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the Broadcasting Satellite Service (BSS) in the 17.3–17.8 GHz band (space-to-Earth) to submit a technical showing demonstrating their ability to maintain sufficient telecommand link margin in the presence of the interfering BSS signal; (b) require 17/24 GHz BSS applicants seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the DBS service in the 17.3–17.8 GHz band (Earth-to-space) to submit a technical showing demonstrating their ability to avoid causing harmful interference to the existing DBS telecommand link; (c) require applicants proposing to co-locate DBS feeder link earth stations at sites where they are already authorized to operate earth stations receiving telemetry signals from space stations operating in the 17/24 GHz BSS service to submit a technical showing demonstrating their ability to maintain sufficient margin in their 17 GHz band telemetry links in the presence of the interfering DBS signal; (d) require applicants proposing to co-locate 17/24 GHz BSS TT&C earth stations at sites where they are already authorized to operate DBS feeder link earth stations to submit a technical showing demonstrating their ability to maintain sufficient margin in their 17 GHz band telemetry links in the presence of the interfering DBS signal; and (e) require applicants for feeder-link earth station licenses that propose to transmit with e.i.r.p. spectral density levels in excess of 5.6 dBW/Hz, under clear sky conditions, to submit a showing demonstrating that their higher power levels will not cause harmful interference to nearby satellites.

56. Establishing service rules for the 17/24 GHz BSS bands will facilitate the delivery of a new generation of satellite services to the public, thus stimulating competition in the communications marketplace. The delivery of these services is anticipated to include standard-definition and high-definition formats and may complement existing DBS service offered by applicants. Operation in the 17/24 GHz BSS band is anticipated to provide a mix of local and national video, audio, data, and video-on-demand to residential and business subscribers in the United States.

*B. Legal Basis*

57. The NPRM is adopted pursuant to §§ 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, *47 U.S.C. 51, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308.*

*C. Description and Estimate of Number of Small Entities Affected by Proposals*

58. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

59. *Satellite Telecommunications.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 536 firms in the category Satellite Telecommunications, total that operated for the entire year. Of this total, 49 firms had annual receipts of $5 million to $9,999,999 and an additional 99 firms had annual receipts of $10 million or more. Thus, under this size standard, the majority of firms can be considered small.

60. *Space Stations (Geostationary).* Commission records reveal that there are 44 space station licensees. We do not request nor collect annual revenue information concerning such licensees, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition cited above, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

61. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are approximately 1142 operational fixed-satellite transmit/receive earth stations authorized for use in the Ku-bands. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

62. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 2002, in this category there was a total of 8,863 firms that operated for the entire year. Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

63. The proposed rules would, if adopted, require a Direct Broadcast Satellite (DBS) service applicant seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the broadcasting-satellite service in the 17.3–17.8 GHz band (space-to-Earth) to submit a technical showing which demonstrates its ability to maintain sufficient telecommand link margin in the presence of the interfering Broadcasting-Satellite Service (BSS) signal. This requirement will aid in ensuring that DBS operators seeking to operate in these locations will be able to maintain their telecommand link in order to maintain control of their satellites.

64. Also, a 17/24 GHz BSS applicant seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the DBS service in the 17.3–17.8 GHz band (Earth-to-space), will be required, under the proposed rules, to submit a technical showing which demonstrates its ability to maintain sufficient telecommand link margin in the presence of the interfering DBS service signal. This requirement will aid in ensuring that BSS operators seeking to operate in these locations will be able to maintain their telecommand link in order to maintain control of their satellites.

65. The proposed rules would also require that applicants proposing to co-locate DBS feeder link earth stations at sites where they are already authorized to operate earth stations receiving telemetry signals from space stations operating in the 17/24 GHz BSS service, must submit a technical showing demonstrating their ability to maintain sufficient margin in the 17 GHz band

telemetry links in the presence of an interfering DBS signal. This requirement will aid in ensuring that DBS earth station operators can monitor the health and status of their satellites in the presence of an interfering signal from the DBS feeder link.

66. The proposed rules would also require that applicants proposing to co-locate 17/24 GHz BSS TT&C earth stations at sites where they are already authorized to operate DBS feeder link earth stations must submit to the Commission a technical showing which demonstrates their ability to maintain sufficient margin in their 17 GHz band telemetry links in the presence of an interfering DBS signal. This requirement will aid in ensuring that the BSS TT&C earth station operators will be able to maintain their telecommand link in order to maintain control of their satellites.

67. Finally, the proposed rules would require that each applicant for a feeder-link earth station license that proposes to transmit with e.i.r.p. spectral density levels in excess of 5.6 dBW/Hz, under clear sky conditions, shall submit (1) link budget analyses of its proposed operations, along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived, and (2) a narrative summary which indicates whether there are margin shortfalls in any of the current baseline services as a result of the addition of the applicant's higher power service. If there are such shortfalls, each applicant must submit an explanation of how the applicant intends to resolve the margin shortfalls. In addition, such applicants shall certify that all potentially affected parties acknowledge, and do not object to, the applicant's use of the higher power densities. This requirement will aid in ensuring that earth station operators proposing to operate in excess of the level described above will not cause harmful interference to adjacent co-frequency satellites.

68. The Commission does not expect significant costs to be associated with these proposals, if adopted. Therefore, we do not anticipate that the burden of compliance would be greater for smaller entities.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

69. The RFA requires that, to the extent consistent with the objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

70. The proposed rules are necessary for the efficient operation of the 17/24 GHz BSS band, which is expected to introduce a new generation of broadband services to the public. We are provisionally considering rules and procedures for operation in the 17/24 GHz BSS band, including requirements for a licensing framework, service obligations, license terms, non-U.S.-licensed satellite operators, public interest obligations, equal employment opportunity requirements, geographic service requirements, tracking, telemetry and command operations, and orbital spacing requirements. We seek comment on alternatives to these provisionally considered rules and procedures that would minimize the economic impact on small entities. We also seek comment on the establishment of differing compliance or reporting requirements that take into account the resources available to small entities.

71. In addition, the Commission is provisionally considering the adoption of rules that would facilitate adjacent band operations, reverse band operations, and shared band operations. We believe that these proposed rules, which may require a technical showing demonstrating the licensee's ability to operate without causing interference to other satellites, are necessary for the efficient administration of bandwidth because they will ensure that operators in the 17/24 GHz BSS band and the DBS service can operate compatibly. We have considered alternatives and believe these are the most equitable solutions to the potential interference problems posed by the operation of the 17/24 GHz BSS service. For example, one alternative is to require that technical showings be made after operation has begun. We rejected this alternative because we concluded that it would not be as efficient as requiring that technical showings be made before operation. This is because, in many instances, harmful interference will invariably occur, which will lead to disruptions in service. By requiring that technical showings be made prior to operation, we anticipate that there will be far fewer instances of harmful interference. We seek comment on viable alternatives to these rules or their reporting requirements that would lessen the economic impact on small entities. We also seek comment on the establishment of differing compliance or reporting requirements that take into account the resources available to small entities. The NPRM seeks comment on these proposals, including the effectiveness and utility of the proposals, and also seeks comment on how to minimize undue burdens on small business.

*E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

72. None.

**Comment Filing Procedures**

73. Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments in response to the NPRM no later than on or before 75 days after **Federal Register** publication. Reply comments to these comments may be filed no later than on or before 105 days after **Federal Register** publication. All pleadings are to reference IB Docket No. 06–90. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

74. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc/gov/e-file/ecfs.html*. Parties should transmit one copy of their comments to the docket in the caption of this rulemaking. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

75. Parties choosing to file by paper must file an original and four copies of each filing in IB Docket No. 05–20. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc. will receive hand-delivered or messenger-delivered

paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

76. Comments submitted on diskette should be on a 3.5 inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, IB Docket No. 05–20), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

77. All parties must file one copy of each pleading electronically or by paper to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*.

78. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*. The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554 and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's World Wide Web site, *http://www.fcc.gov*.

79. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this Notice in order to facilitate our internal review process.

80. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

81. *Accordingly, it is ordered* pursuant to §§ 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, that this Notice of Proposed Rulemaking in IB Docket No. 06–123 is hereby *adopted*.

82. *It is further ordered* that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 2*

Telecommunications.

*47 CFR Part 25*

Satellites.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

For the reasons discussed above, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 25 as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise page 48.

b. In the list of non-Federal Government footnotes, revise footnotes NG163 and NG 167.

**§ 2.106 Table of Frequency Allocations.**

BILLING CODE 6712–01–P

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|---|---|---|---|---|---|
| 15.35-15.4<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br><br>5.340 5.511 | | | 15.35-15.4<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY US74<br>SPACE RESEARCH (passive)<br><br>US246 | | |
| 15.4-15.43<br>AERONAUTICAL RADIONAVIGATION<br><br>5.511D | | | 15.4-15.43<br>AERONAUTICAL RADIONAVIGATION US260<br><br>US211 | | Aviation (87) |
| 15.43-15.63<br>FIXED SATELLITE (Earth-to-space) 5.511A<br>AERONAUTICAL RADIONAVIGATION<br><br>5.511C | | | 15.43-15.63<br>AERONAUTICAL RADIONAVIGATION US260<br><br>5.511C US211 US359 | 15.43-15.63<br>FIXED SATELLITE (Earth-to-space)<br>AERONAUTICAL RADIONAVIGATION US260<br><br>5.511C US211 US359 | Satellite Communications (25)<br>Aviation (87) |
| 15.63-15.7<br>AERONAUTICAL RADIONAVIGATION<br><br>5.511D | | | 15.63-15.7<br>AERONAUTICAL RADIONAVIGATION US260<br><br>US211 | | Aviation (87) |
| 15.7-16.6<br>RADIOLOCATION<br><br>5.512 5.513 | | | 15.7-16.6<br>RADIOLOCATION G59 | 15.7-17.2<br>Radiolocation | Private Land Mobile (90) |
| 16.6-17.1<br>RADIOLOCATION<br>Space research (deep space) (Earth-to-space)<br><br>5.512 5.513 | | | 16.6-17.1<br>RADIOLOCATION G59<br>Space research (deep space) (Earth-to-space) | | |
| 17.1-17.2<br>RADIOLOCATION<br><br>5.512 5.513 | | | 17.1-17.2<br>RADIOLOCATION G59 | | |
| 17.2-17.3<br>EARTH EXPLORATION-SATELLITE (active)<br>RADIOLOCATION<br>SPACE RESEARCH (active)<br><br>5.512 5.513 5.513A | | | 17.2-17.3<br>EARTH EXPLORATION-SATELLITE (active)<br>RADIOLOCATION G59<br>SPACE RESEARCH (active) | 17.2-17.3<br>Radiolocation<br>Earth exploration-satellite (active)<br>Space research (active) | |
| 17.3-17.7<br>FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B<br>Radiolocation<br><br>5.514 | 17.3-17.7<br>FIXED-SATELLITE (Earth-to-space) 5.516<br>BROADCASTING-SATELLITE<br>Radiolocation<br><br>5.514 5.515 5.517 | 17.3-17.7<br>FIXED-SATELLITE (Earth-to-space) 5.516<br>Radiolocation<br><br>5.514 | 17.3-17.7<br>Radiolocation US259 G59 | 17.3-17.7<br>FIXED-SATELLITE (Earth-to-space) US271<br>BROADCASTING-SATELLITE NG163<br><br>US259 | Satellite Communications (25) |

**Non-Federal Government Footnotes**

* * * * *

NG163 The allocation to the broadcasting-satellite service in the band 17.3–17.7 GHz shall come into effect on 1 April 2007. Use of the 17.3–17.7 GHz band by the broadcasting-satellite service is limited to geostationary satellite orbit systems.

* * * * *

NG167 The use of the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz is limited to feeder links for the broadcasting-satellite service. The allocation to the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz shall come into effect on 1 April 2007.

* * * * *

## PART 25—SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies §§ 4, 301, 302, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

4. Section 25.114 is amended by adding paragraphs (d)(15) and (d)(16) to read as follows:

**§ 25.114 Application for Space Station Authorizations.**

* * * * *

(d) * * *

(15) For satellite applications in the Direct Broadcast Satellite service seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the broadcasting-satellite service in the 17.3–17.7 GHz band (space-to-Earth), a technical showing with regard to its telecommand link margin in accordance with § 25.148(g).

(16) For satellite applications in the 17/24 GHz broadcasting-satellite service seeking to operate within [TBD] degrees of a geostationary orbital location where a direct broadcast satellite (DBS) space station has already been authorized to operate that has feeder links in the 17.3–17.8 GHz band (Earth-to-space), a technical showing with regard to the DBS system's telecommand link margin as in accordance with § 25.141(e).

5. Section 25.121 is amended by revising paragraph (a) to read as follows:

**§ 25.121 License term and renewals.**

(a) *License Term.* Except for licenses for DBS and 17/24 GHz facilities, licenses for facilities governed by this part will be issued for a period 15 years. Licenses for DBS and 17/24 GHz space stations licensed as broadcast facilities will be issued for a period of 8 years. Licenses for DBS and 17/24 GHz space stations not licensed as broadcast facilities will be issued for a period of 10 years.

* * * * *

6. Add § 25.141 to subpart B to read as follows:

**§ 25.141 Licensing Provisions for the 17/24 GHz Broadcasting Satellite Service.**

(a) *License terms.* License terms for 17/24 GHz facilities are specified in § 25.121(a).

(b) *Due Diligence.*

(c) *Geographic service requirements.*

(d) *Bond Requirement.*

(e) *Co-location with DBS space stations.* A 17/24 GHz BSS applicant seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the direct broadcast satellite (DBS) service in the 12.2–12.7 GHz band that is authorized to use feeder links in the 17.3–17.8 GHz band (Earth-to-space), must submit to the Commission a technical showing demonstrating its ability to avoid causing harmful interference to the DBS operator, such that the DBS system is able to maintain sufficient margin in its telecommand link in the presence of the interfering BSS signal.

(f) *Limit on pending applications.*

(g) *Milestone requirements.*

(h) *Replacement satellites.*

(i) *Non-U.S.-licensed satellites.*

(j) *Public interest.*

(k) *Equal employment opportunity.*

7. Section 25.148 is amended by adding paragraphs (g) and (h) to read as follows:

**§ 25.148 Licensing provisions for the Direct Broadcast Satellite Service.**

* * * * *

(g) *Co-location with 17/24 GHz BSS space stations.* A DBS applicant seeking to operate within [TBD] degrees of a geostationary orbital location where a space station has already been authorized to operate in the broadcasting-satellite service in the 17.3–17.7 GHz band (space-to-Earth), must submit to the Commission a technical showing demonstrating its ability to maintain sufficient telecommand link margin in the presence of the interfering BSS signal.

(h) *Co-location of DBS feeder links and 17/24 GHz BSS TT&C earth stations.* Applicants proposing to co-locate their DBS feeder link earth stations at sites where they are already authorized to operate earth stations receiving telemetry signals from space stations operating in the 17/24 GHz BSS service, must submit to the Commission a technical showing demonstrating their ability to maintain sufficient margin in their 17 GHz band telemetry links in the presence of the interfering DBS feeder-link signal.

8. Section 25.201 is amended by adding the following definition in alphabetical order to read as follows:

**§ 25.201 Definitions.**

* * * * *

*Broadcasting-Satellite Service.* A radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. In the broadcasting-satellite service, the term *direct reception* shall encompass both individual reception and community reception.

* * * * *

9. Amend § 25.202 as follows:

a. In paragraph (a)(1), add a new entry and its footnote in numerical order to the ''Earth-to-space (GHz)'' column of the Table.

b. Add paragraph (a)(9).

**§ 25.202 Frequencies, frequency tolerance and emission limitations.**

(a)(1) * * *

| Space-to-earth (GHz) | Earth-to-space (GHz) |
|---|---|
| * * * | * * |
| | [18]24.75–25.25 |
| * * * | * * |

[18] Use of the band 24.75–25.25 GHz by the fixed-satellite service (Earth-to-space) is limited to feeder links for space stations in the broadcasting-satellite service. The allocation to the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz shall come into effect on 1 April 2007.

* * * * *

(9) The following frequencies are available for use by the Broadcasting-Satellite Service after 1 April 2007:

17.3–17.7 GHz (space-to-Earth)

17.7–17.8 GHz (space-to-Earth)

Use of the 17.3–17.7 GHz band by the broadcasting-satellite service is limited to geostationary satellite orbit systems. Use of the 17.7–17.8 GHz band (space-to-Earth) by the broadcasting-satellite service is limited to transmissions from geostationary satellite orbit systems to receiving earth stations located outside of the United States and its Possessions.

* * * * *

10. Section 25.208 is amended by revising paragraph (c) introductory text to read as follows:

**§ 25.208 Power flux density limits.**

* * * * *

(c) In the 17.7–17.8 GHz, 18.3–18.8 GHz, 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz

frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions for all methods of modulation shall not exceed the following values:

* * * * *

11. Add § 25.223 to read as follows:

**§ 25.223 Technical requirements for space stations operating in the 17/24 GHz broadcasting-satellite service.**

All space stations operating in the 17/24 GHz broadcasting-satellite service shall employ state-of-the art full frequency re-use either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams.

12. Section 25.251 is amended by revising paragraph (b) and adding paragraph (c) as follows:

**§ 25.251 Special requirements for coordination.**

* * * * *

(b) The administrative aspects of the coordination process in the case of coordination of DBS feeder-link earth stations with 17/24 GHz BSS receiving earth stations are set forth in § 25.xxx in combination with the additional technical parameters set forth in [TBD].

(c) The technical aspects of coordination are based on Appendix 7 of the International Telecommunication Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector (available at the FCC's Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554).

13. Add § 25.262 to subpart C to read as follows:

**§ 25.262 Technical requirements for 24 GHz band feeder link earth stations transmitting to space stations in the broadcasting-satellite service.**

(a) All applications for an FSS feeder-link earth station license in the 24.75–25.25 GHz band shall meet the following requirements:

(1) The feeder link earth station antenna shall not transmit with e.i.r.p. spectral density levels in excess of 5.6 dBW/Hz, under clear sky conditions, except as otherwise provided by this part.

(2) Each applicant for feeder-link earth station license(s) that proposes levels in excess of those defined in paragraph (a)(1) of this section shall submit link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived. Applicants shall also submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the applicant's higher power service, and if so, how the applicant intends to resolve those margin short falls. Applicants shall certify that all potentially affected parties (i.e., those 17/24 GHz GSO BSS satellite networks that are [TBD] degrees apart) acknowledge and do not object to the use of the applicant's higher power densities.

(3) Licensees authorized pursuant to paragraph (a)(2) of this section shall bear the burden of coordinating with any future applicants or licensees whose proposed compliant operations at [TBD] degrees or smaller orbital spacing, as defined by paragraph (a)(1) of this section, is potentially or actually adversely affected by the operation of the non-compliant licensee. If no good faith agreement can be reached, however, the non-compliant licensee shall reduce its earth station power density levels to be compliant with those specified in paragraph (a)(1) of this section.

(b) Applicants proposing to co-locate their 17/24 GHz BSS TT&C earth stations at sites where they are already authorized to operate DBS feeder link earth stations, must submit to the Commission a technical showing demonstrating their ability to maintain sufficient margin in their 17 GHz band telemetry links in the presence of the interfering DBS signal.

14. Add § 25.263 to subpart C to read as follows:

**§ 25.263 Special coordination requirements for DBS feeder link earth stations to protect 17/24 GHz BSS receiving earth stations.**

(a) *Coordination with 17/24 GHz BSS receiving earth stations.* Feeder-link earth station applicant planning to operate in the 17.3–17.8 GHz band shall coordinate the proposed frequency usage with 17/24 GHz BSS receiving earth stations, including 17/24 GHz BSS TT&C earth stations, in accordance with the procedures set forth in § 25.251.

(b) In computing the coordination distance for the transmitting DBS feeder-link earth station, the applicant shall use the following technical parameters:

| Parameter(s) | Value | Description |
|---|---|---|
| Orbit | GSO | Orbit in which the space service in which receiving earth station operates (GSO or NGSO). |
| Modulation at receiving earth station | [TBD] | Analog or digital. |
| Receiving earth station interference parameters and criteria: | | |
| $p_o$ (%) | [TBD] | Percentage of the time during which interference from all sources may exceed the threshold value. |
| n | [TBD] | Number of equivalent, equal level, equal probability entries of interference, assumed to be uncorrelated for small percentages of the time. |
| p(%) | [TBD] | Percentage of the time during which the interference from one source may exceed the permissible interference power value; since the entries of interference are not likely to occur simultaneously, $p = p_o/n$ |
| $N_L$ (dB) | [TBD] | Link noise contribution. |
| $M_s$ (dB) | [TBD] | Link performance margin. |
| W (dB) | [TBD] | A thermal noise equivalence factor for interfering emissions in the reference bandwidth; it is positive when the interfering emissions would cause more degradation than thermal noise. |
| Receiving earth station parameters: | | |
| $G_m$ (dBi) | [TBD] | On-axis gain of the receive earth station antenna. |
| $G_r$ | [TBD] | Horizon antenna gain for the receive earth station. |
| $\varepsilon_{min}$ | [TBD] | Minimum elevation angle of operation in degrees. |
| $T_e$ (K) | [TBD] | The thermal noise temperature of the receiving system at the terminal of the receiving antenna. |
| Reference Bandwidth: | | |

| Parameter(s) | Value | Description |
|---|---|---|
| B (Hz) | [TBD] | Reference bandwidth (Hz), i.e., the bandwidth in the receiving station that is subject to the interference and over which the power of the interfering emission can be averaged. |
| Permissible interference power: $P_r(p)$ (dBW) in B | [TBD] | Permissible interference power of the interfering emission (dBW) in the reference bandwidth to be exceeded no more than p% of the time at the receiving antenna terminal of a station subject to interference, from a single source of interference, using the general formula: $P_r(p) = 10 \log (k T_e B) + N_L + 10 \log (10^{Ms/10} - 1) - W$. |

(c) The feeder-link earth station applicant shall provide each such 17/24 GHz BSS licensee, and prior-filed applicant with the technical details of the proposed earth station and the relevant coordination distance calculations that were made. At a minimum, the earth station applicant shall provide the 17/24 GHz BSS licensee, and/or prior filed applicants with the following technical information:

(1) The geographical coordinates of the proposed earth station antenna(s);

(2) Proposed operating frequency band(s) and emission(s);

(3) Antenna center height above ground and ground elevation above mean sea level;

(4) Antenna gain pattern(s) in the plane of the main beam;

(5) Longitude range of geostationary satellite orbit (GSO) satellites at which antenna may be pointed, for proposed earth station antenna(s) accessing GSO satellites;

(6) Horizon elevation plot;

(7) Antenna horizon gain plot(s) determined in accordance with the procedure in Section 2.1 of Annex 5 to Appendix 7;

(8) Minimum elevation angle;

(9) Maximum equivalent isotropically radiated power (e.i.r.p.) density in the main beam in any [TBD] Hz band;

(10) Maximum available RF transmit power density in any [TBD] Hz band at the input terminals of the antenna(s);

(11) Maximum permissible RF interference power level as determined in accordance with Annex 7 to Appendix 7 for all applicable percentages of time; and

(12) A plot of the coordination distance contour(s) and rain scatter coordination distance contour(s) as determined by Table 2 of Section 3 to Appendix 7.

[FR Doc. 06–6630 Filed 8–1–06; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 06–1451; MB Docket No. 05–229; RM–10780]**

### Radio Broadcasting Services; Madisonville and Rosebud, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** This document, at the request of Petitioner Charles Crawford, dismisses his pending petition for rulemaking to allot Channel 267A at Rosebud, Texas. The dismissed proposal would have required a change in reference coordinates for Channel 267A at Madisonville, Texas, and the reclassification of Station KNUE(FM), Tyler, Texas to a Class C0 facility. The document therefore terminates this proceeding.

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

**FOR FURTHER INFORMATION CONTACT:** Helen McLean, Media Bureau (202) 418–2738.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 05–229, adopted July 12, 2006, and released July 14, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Report and Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E6–12319 Filed 8–1–06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### 49 CFR Parts 1111, 1114, 1115 and 1244

**[STB Ex Parte No. 646 (Sub-No. 1)]**

### Simplified Standards for Rail Rate Cases

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board has instituted a proceeding to seek public comments on proposed changes to revise and clarify its guidelines for deciding small rate cases. In particular, the Board proposes to: create a simplified stand-alone cost (Simplified-SAC) method to be used in medium-size rate disputes for which a full stand-alone cost (Full-SAC) presentation would be too costly, given the value of the case; retain the Three-Benchmark method for small rate disputes for which a Simplified-SAC presentation would be too costly; and establish eligibility presumptions to distinguish between large, medium-size, and small rail rate disputes. These changes are intended to advance Congress' mandate to ''establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full SAC presentation is too costly, given the value of the case.'' 49 U.S.C. 10701(d)(3).

**DATES:** Notices of intent to participate are due on September 1, 2006. Comments are due on September 29, 2006. Replies are due on October 30,

2006. Rebuttals are due on December 1, 2006.

**ADDRESSES:** All notices of intent to participate and comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person wishing to submit an e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 20 paper copies of the filing (referring to STB Ex Parte No. 646 (Sub-No. 1)) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Joseph Dettmar, 202–565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Board is instituting a proceeding to revise and clarify its guidelines for deciding small rate cases. The Board proposes a new methodology, Simplified-SAC, to be applied in medium-size rate cases. The Board also proposes to revise and clarify existing guidelines for deciding small rate cases and to establish new eligibility criteria for determining which cases would be considered under each of the three methodologies.

Simplified-SAC would provide an economical, streamlined methodology that nonetheless approximates the court-approved SAC method used in large rate cases. Simplified-SAC achieves this goal by using the framework of the Full-SAC methodology but eliminating or restricting evidentiary submissions on certain issues. For example, shippers, in constructing a stand-alone railroad (SARR) under Simplified-SAC, would generally use the existing facilities along the selected route of the movements at issue. The test year would be limited to one year, the traffic group would consist of the movements that traveled over the selected route in the test year, road property investment would be drawn from the Board's prior experience in Full-SAC cases, and operating expenses would be estimated using the uniform rail costing system (URCS). The case would be decided in 18 months from the filing of the complaint under a proposed three-phase procedural schedule. The Board also proposes new, standardized discovery procedures for cases under Simplified-SAC.

The existing methodology for small disputes, the Three-Benchmark standard, would be refined to eliminate uncertainties in how the methodology would be applied. The proposal would use final offer selection to choose between comparison traffic groups offered by the complainant and the defendant, and would use a single unadjusted Revenue Shortfall Allocation Methodology (RSAM) figure. This proposal would prescribe a specific formula for applying the benchmarks and would use unadjusted URCS to calculate variable costs. In addition, the Board proposes to adopt a tight procedural schedule for determining eligibility, resolving discovery disputes, and issuing a decision on the merits within 9 months of the filing of the complaint. The proposal would also streamline discovery, establish procedures for the release of certain waybill data, and modify the methods for computing two of the benchmarks by basing them on publicly available data.

New eligibility criteria for each methodology are proposed, based on the maximum value of the case, defined as the maximum relief the complainant could obtain over a 5-year period if the challenged rate were reduced to 180% of variable cost. A case with a maximum value exceeding $3.5 million would be presumed appropriate for handling under the Full-SAC methodology. For a case with a maximum value between $200,000 and $3.5 million, the complainant could use either the Full-SAC or Simplified-SAC methodology, but the Board would presume it could not use the Three-Benchmark methodology. A case with a maximum value of less than $200,000 would be eligible for handling under the Three-Benchmark methodology. These eligibility presumptions could be rebutted based on the likely actual (as opposed to maximum) value of the case.

Additional information is contained in the Board's decision served on July 28, 2006. To obtain a copy of the decision, visit the Board's Web site at *http://www.stb.dot.gov.*

**Comments**

The Board invites comments on the proposed revisions to the simplified standards and on the proposed regulations. Notices of intent to participate are due on September 1, 2006. Comments are due on September 29, 2006. Replies are due on October 30, 2006. Rebuttals are due on December 1, 2006. All comments must comply with the Board's requirements at 49 CFR part 1104. A service list will be available at the Board's Web site by September 15, 2006.

**Regulatory Flexibility Analysis**

This action will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Parts 1111, 1114, 1115, and 1244**

Administrative practice and procedure, Railroads.

**Authority:** 5 U.S.C. 553.

Decided: July 26, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the decision, the Surface Transportation Board proposes to amend parts 1111, 1114, 1115 and 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 continues to read as follows:

**Authority:** 49 U.S.C. 721, 10704, and 11701.

2. Amend § 1111.1 as follows:

A. Revise paragraphs (a)(1) through (11).

B. Redesignate current paragraphs (b) through (d) as paragraphs (c) through (e).

C. Add new paragraph (b).

**§ 1111.1 Content of formal complaints; joinder.**

(a) * * *

(1) The carrier or region identifier.

(2) The type of shipment (local, received-terminated, etc.).

(3) The one-way distance of the shipment.

(4) The type of car (by URCS code).

(5) The number of cars.

(6) The car ownership (private or railroad).

(7) The commodity type (STCC code).

(8) The weight of the shipment (in tons per car).

(9) The type of movement (individual, multi-car, or unit train).

(10) A narrative addressing whether there is any feasible transportation alternative for the challenged movements.

(11) Evidence and argument on eligibility.

(b) *Disclosure with simplified standards complaint.* The complainant

must provide to the respondent all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.

* * * * *

3. Amend § 1111.4 as follows:

A. In paragraph (a), add a new sentence to the end of the paragraph.

B. Redesignate current paragraphs (b) through (d) as paragraphs (c) through (e).

C. Add new paragraph (b).

**§ 1111.4 Answers and cross complaints.**

* * * * *

(a) * * * In response to a complaint filed under the simplified standards, the answer must include the defendant's preliminary estimate of the variable cost of each challenged movement calculated using the unadjusted figures produced by the URCS Phase III program.

(b) *Disclosure with simplified standards answer.* The defendant must provide to the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III program.

* * * * *

4. Revise § 1111.9 to read as follows:

**§ 1111.9 Procedural schedule in cases using simplified standards**

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedules will apply in cases using the simplified standards:

(1) In cases relying upon the Simplified-SAC methodology:

**Phase 1**

Day 0—Complaint filed (including evidence and argument on eligibility and disclosure).
Day 20—Defendant's answer to complaint (including reply on eligibility and initial disclosure).
Day 30—Complainant's rebuttal on eligibility.
Day 50—Board decision on eligibility.

**Phase 2**

Day 50—Discovery begins.
Day 80—Complainant's opening evidence on selected route.
Day 100—Defendant's reply on selected route.
Day 110—Complainant's rebuttal on selected route.
Day 140—Staff decision on route.
Day 170—Defendant's second disclosure.
Day 180—Discovery closes.

**Phase 3**

Day 250—Opening evidence.
Day 310—Reply evidence.
Day 340—Rebuttal evidence
Day 350—Technical conference (market dominance and merits).
Day 360—Final briefs.

(2) In cases relying upon the Three-Benchmark method:

**Phase 1**

Day 0—Complaint filed (including evidence and argument on eligibility and complainant's disclosure).
Day 20—Defendant's answer to complaint (including reply on eligibility and initial disclosure).
Day 30—Complainant's rebuttal on eligibility.
Day 50—Board decision on eligibility.

**Phase 2**

Day 50—Board production of Waybill Sample to parties. Discovery commences.
Day 100—Discovery closes.

**Phase 3**

Day 120—Complainant's opening (initial tender of comparison group and opening evidence on market dominance). Defendant's opening (initial tender of comparison group).
Day 125—Technical conference on comparison group.
Day 150—Parties' final tenders on comparison group. Defendant's reply on market dominance.
Day 180—Parties' replies to final tenders. Complainant's rebuttal on market dominance.

(b) *Defendant's Second Disclosure.* In cases using the Simplified-SAC methodology, the defendant must make the following initial disclosures to the complainant by Day 170 of the procedural schedule.

(1) Identification of all traffic that moved over the routes replicated by the SARR in the Test Year.

(2) Information about those movements, in electronic format, aggregated by origin-destination pair and shipper, showing the origin, destination, volume, and total revenues from each movement.

(3) Total operating and equipment cost calculations for each of those movements, provided in electronic format.

(4) Revenue allocation for the on-SARR portion of each cross-over movement in the traffic group provided in electronic format.

(5) All workpapers and documentation necessary to support the calculations.

(c) *Conferences with parties.* The Board may convene a conference of the parties with Board staff to facilitate voluntary resolution of discovery disputes and to address technical issues that may arise.

5. Amend § 1111.10 as follows:

A. In paragraph (a), revise the first sentence.

B. In paragraph (b), revise the paragraph heading and first sentence.

**§ 1111.10 Meeting to discuss procedural matters.**

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed.

* * *

(b) *Stand-alone cost or simplified standards complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 7 days after an answer to a complaint is filed.

* * *

## PART 1114—EVIDENCE; DISCOVERY

6. The authority citation for part 1114 continues to read as follows:

**Authority:** 5 U.S.C. 559, 49 U.S.C. 721.

7. Amend § 1114.21 by adding new paragraph (a)(3) to read as follows:

**§ 1114.21 Applicability; general provisions.**

(a) * * *

(3) In cases using the simplified standards Three-Benchmark method, the number of discovery requests that either party can submit are limited as set forth in §§ 1114.22, 1114.26, and 1114.30, absent advance authorization from the Board.

* * * * *

8. Amend § 1114.22 by adding new paragraph (c) to read as follows:

**§ 1114.22 Deposition.**

* * * * *

(c) *Limitation under simplified standards.* In a case using the Three-Benchmark methodology, each party is limited to one deposition absent advance authorization from the Board.

9. Amend § 1114.26 by adding new paragraph (d) to read as follows:

**§ 1114.26 Written interrogatories to parties.**

* * * * *

(d) *Limitation under simplified standards.* In a case using the Three-Benchmark methodology, each party is

limited to ten interrogatories (including subparts) absent advance authorization from the Board.

10. Amend § 1114.30 by adding new paragraph (c) to read as follows:

**§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.**

* * * * *

(c) *Limitation under simplified standards.* In a case using the Three-Benchmark methodology, each party is limited to ten document requests (including subparts) absent advance authorization from the Board.

11. Amend § 1114.31 by revising paragraphs (a)(1) through (4) to read as follows:

**§ 1114.31 Failure to respond to discovery.**

(a) * * *

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology or simplified standards, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) *Reply to motion to compel in stand-alone cost and simplified standards rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology or under the simplified standards.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology or under the simplified standards, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost and simplified standards rate cases.* Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery. If no conference is convened, the Secretary will issue this summary ruling within 10 days after the filing of the reply to a motion to compel. Appeals of a Secretary's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

* * * * *

## PART 1115—APPELLATE PROCEDURES

12. The authority citation for part 1115 continues to read as follows:

**Authority:** 5 U.S.C. 559, 49 U.S.C. 721.

13. Amend § 1115.9 by revising the first sentence of paragraph (b) to read as follows:

**§ 1115.9 Interlocutory appeals.**

* * * * *

(b) In stand-alone cost complaints or in cases filed under the simplified standards, any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. * * *

* * * * *

## PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY-RAILROADS

13. The authority citation for part 1244 continues to read as follows:

**Authority:** 49 U.S.C. 721, 10707, 11144, 11145.

14. Amend § 1244.9 as follows:

A. Redesignate paragraph (b)(5) as (b)(6) and add new paragraph (b)(5).

B. In paragraph (c), remove the word ''(b)(5)'' and add, in its place, the word ''(b)(6)''.

C. In paragraph (d) introductory text, remove the word ''(b)(5)'' and add, in its place, the word ''(b)(6)''.

**§ 1244.9 Procedures for the release of waybill data.**

* * * * *

(b) * * *

(5) *Transportation practitioners, consulting firms and law firms in simplified standards cases.* Once the Board determines that a complainant is eligible to use the Three-Benchmark method, the Board, without any further request from the parties, would release all movements in the most recent Waybill Sample of the same 2-digit STCC code as the issue movement and with a revenue-to-variable cost ratio above 180%. Confidential contract rate information will be encrypted. A signed confidentiality agreement consistent with paragraph (b)(4)(v) of this section must accompany the parties' complaint and answer.

* * * * *

[FR Doc. E6–12433 Filed 8–1–06; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 072806A]**

**RIN 0648–AS67**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Individual Fishing Quota Program for Gulf Commercial Red Snapper Fishery

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces the availability of Amendment 26 to the Fishery Management Plan (FMP) for the Reef Fish Resource of the Gulf of Mexico (Amendment 26) prepared by the Gulf of Mexico Fishery Management Council (Council). Amendment 26 would establish an Individual Fishing Quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery. The intended effect of Amendment 26 is to reduce overcapacity in the commercial red snapper fishery and to eliminate, to the extent possible, the problems associated with derby fishing, in order to assist the Council in achieving optimum yield (OY) from the fishery.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on October 2, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: *0648–AS67.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS67–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Phil Steele, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Phil Steele.

Copies of Amendment 26, which includes a supplemental environmental impact statement (SEIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), may be obtained from the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*. In

addition, copies of the final SEIS, a revised RIR, and a revised IRFA, prepared by NMFS are also available from the Council at the address above. Copies of all of these documents may also be downloaded from the Council's Web site at *www.gulfcouncil.org*.

The final supplemental environmental impact statement (FSEIS) for this amendment includes discussion and analyses NMFS added to the environmental impact statement contained in the amendment the Council approved and submitted for Secretarial review. In the FSEIS, NMFS also included a revision of the IFRA originally integrated in the Council amendment. Additional text and analyses clarify the distinction between IFQ shareholders and IFQ allocation holders, and more clearly distinguish the roles and responsibilities of these two participant types.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, 727 824 5305; fax 727–824–5308; e-mail: *phil.steele@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Council addressed overcapacity in the red snapper fishery in 1995 through Amendment 8 to the FMP. In this amendment, the Council examined several management alternatives including license limitation, IFQs, and more traditional management measures (i.e., open access), and determined an IFQ program had the most potential to address the immediate overcapitalization problems and achieve OY from the fishery. However, Amendment 8 was never implemented because of congressional action. Following the expiration of the congressional IFQ moratorium, NMFS conducted a referendum required by Section 407(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to determine whether commercial red snapper fishermen supported further consideration of an IFQ program. The Council began developing this amendment following a majority ''yes'' vote on the referendum. NMFS conducted the second referendum required by the Magnuson-Stevens Act to determine whether fishermen approved the IFQ amendment developed by the Council for submission to the Secretary of Commerce (Secretary). Following a majority ''yes'' vote in the second referendum, the Council at its March 2006 meeting voted to submit the IFQ amendment to the Secretary for review.

The main action in this amendment (Action 1) is to establish an IFQ program. The following actions (Actions 2–11) determine the structure of the program. These actions are: IFQ program duration; ownership caps and restrictions on IFQ share certificates; eligibility for initial IFQ allocation; initial apportionment of IFQ shares; establishment and structure of an appeals process; transfer eligibility requirements; use it or lose it clause for IFQ shares or allocations; adjustments in commercial quota; use of a vessel monitoring system; and a cost recovery plan.

A proposed rule that would implement the measures outlined in Amendment 26 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by October 2, 2006, whether specifically directed to Amendment 26 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: July 28, 2006.

**James P. Burgess,**

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

[FR Doc. 06–6645 Filed 7–28–06; 2:19 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 060719196–6196–01.; I.D. 071106F]**

**RIN 0648–AU54**

### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** The final rule implementing the specifications for the 2005 fishing year for Atlantic mackerel, squid, and butterfish (MSB) clarified the expiration date of the limited entry program for *Illex* squid, established a minimum mesh requirement for the butterfish fishery, and removed a regulatory requirement for annual specifications to be published by a specific date. These regulatory measures were intended to be of a permanent nature, unlike the specifications themselves, which expired January 1, 2006. An error in the final rule caused these three measures to expire; this proposed rule would restore the regulatory requirements. This action is being taken by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Public comments must be received no later than 5 p.m., Eastern Daylight Time, on August 17, 2006.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), for the 2005 specifications are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.noaa.gov*.

Comments on the proposed rule should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments–2005 MSB Specifications Corrections.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments on the specifications may be submitted by e-mail. The mailbox address for providing e-mail comments is *MSB2005corrections@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments–2005 MSB Corrections.'' Comments may also be submitted via Webform at the Federal eRulemaking Portal *www.regulations.com* by following the instructions at that site for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

#### Background

NMFS published final specifications for the 2005 fishing year for MSB in the

**Federal Register** on March 21, 2005 (70 FR 13406), and the measures became effective on April 20, 2005. The final rule included regulatory changes that were meant to be permanent, as well as the MSB specifications which were intended to expire on January 1, 2006. However, in the effective dates section of the final rule, the distinction between the annual specifications and the permanent regulations was not defined and, as a result, all of the measures of the final rule expired on January 1, 2006. This proposed action permanently reestablishes the regulatory measures as intended.

**Proposed Measures**

*Illex Moratorium Permits*

Framework 4 to the MSB Fishery Management Plan (FMP) became effective July 1, 2004(69 FR 30839, June 1, 2004), and extended the limited entry program for the *Illex* squid fishery through July 1, 2009. In a subsequent regulatory action, the text reflecting the extension was, as mentioned above, not identified as a permanent regulation and therefore expired on January 1, 2006. This proposed rule would specify the July 1, 2009, expiration date in the regulatory text.

*Gear Specifications For Otter Trawl Butterfish Trips*

The final rule implementing the 2005 MSB specifications included a 3.0–inch (7.62–cm) minimum codend mesh size requirement for butterfish otter trawl trips of greater than 5,000 lb (2,268 kg). The measure was described in detail in the proposed rule for the 2005 MSB specifications (70 FR 1686, January 10, 2005) and is only summarized here. The purpose of this minimum mesh size requirement is to allow for escapement of unmarketable butterfish and butterfish below the size at which 50 percent are sexually mature. This minimum mesh size requirement reduces discards in the directed fishery, especially of small, sexually immature butterfish, which will increase the chance of successful recruitment and aid in stock rebuilding. This proposed rule would re-establish the minimum mesh size requirements in the regulations.

*Annual Specifications*

The final rule for implementing the 2005 MSB specifications included a clarification to the regulations in § 648.21, removing references to the dates on which the proposed and final rules for the annual specifications must be published by the Administrator, Northeast Region, NMFS (Regional Administrator), because it is not necessary to specify those dates in regulatory text. This proposed rule would re-instate that clarification by removing the unnecessary dates.

**Classification**

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of E.O. 12866. The Council prepared an IRFA for the 2005 MSB specifications, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and the proposed rule for the 2005 MSB specifications and is not repeated here.

**Description and Estimate of Number of Small Entities to Which the Rule Will Apply**

The number of potential fishing vessels in the 2005 fisheries were 72 for Illex squid, and 2,119 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The proposed action would implement a 3.0–inch (7.62–cm) minimum codend mesh size requirement for otter trawl trips landing more than 5,000 lb (2,278 kg) of butterfish. During the period 2001–2003, 16,854 trips landed butterfish, based on unpublished NMFS Vessel Trip Report (VTR) data. More than half (57 percent) of the landings of butterfish during 2001–2003 were taken with mesh sizes less than 3.0 inches (7.62–cm). Within this mesh size range, most were taken with mesh sizes between 2.5 inches (6.35–cm) and 3.0 inches (7.62–cm). The trips using this mesh size range (i.e., less than 3.0 inches (7.62–cm))could potentially be affected by the proposed mesh size. However, the proposed 3.0–inch (7.62–cm) mesh requirement would only apply to otter trawl trips landing 5,000 lb (2,278 kg) or more of butterfish. In terms of numerical frequency of trips, the vast majority of trips during 2001–2003 landed less than 5,000 lb (2,278 kg) of butterfish, based on NMFS VTR data. While 57 percent of the landings by weight were taken on trips of greater than 5,000 lb (2,278 kg) during the period, fewer than 1 percent of the trips landing butterfish landed more than 5,000 lb (2,278 kg). Only 26 vessels had trips that included landings of butterfish of 5,000 lb (2,278 kg) or more, and also reported using mesh sizes less than 3.0 inches (7.62 cm) on those trips. Therefore, it is expected that the economic impact of this proposed measure would be negligible, because the vast majority of trips and vessels would not be affected. The costs for those vessels that do land butterfish on trips of more than 5,000 lb (2,278 kg) of butterfish should also be negligible because virtually all of those vessels already possess codends with 3.0- inch (7.62–cm) mesh or greater (because they are fishing for butterfish or in another fishery that uses nets of that size, e.g., whiting). Therefore, they should not incur any additional costs due to the proposed minimum mesh size requirement. When the Council considered implementing a mesh size requirement for butterfish landings, the only alternative to the proposed action considered was not implementing any mesh size requirement.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, the introductory text of paragraph (a)(5)(i) is added to read as follows:

**§ 684.4 Vessel permits.**

(a) * * *

(5) * * *

*(i) Loligo squid/butterfish and Illex squid moratorium permits (Illex squid moratorium is in effect until July 1, 2009).*

* * * * *

3. In § 648.14, paragraphs (a)(74) and (p)(5) are added and paragraph (p)(11) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of Loligo or butterfish harvested in or from the EEZ.

* * * * *

(p) * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for Loligo or butterfish specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

* * * * *

(11) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

4. In § 648.21, paragraph (d) is added to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

* * * * *

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the **Federal Register** notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

* * * * *

5. In § 648.23, paragraph (a) is added to read as follows:

**§ 648.23 Gear restrictions.**

(a) Mesh restrictions and exemptions. (1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 7/8 inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

| Point | N. Lat. | W. Long. |
|---|---|---|
| M1 | 43 ° 58.0′ | 67 ° 22.0′ |
| M2 | 43 °50.0′ | 68 °35.0′ |
| M3 | 43 °30.0′ | 69 °40.0′ |
| M4 | 43 °20.0′ | 70 °00.0′ |
| M5 | 42 °45.0′ | 70 °10.0′ |
| M6 | 42 °13.0′ | 69 °55.0′ |
| M7 | 41 °00.0′ | 69 °00.0′ |
| M8 | 41 °45.0′ | 68 °15.0′ |
| M9 | 42 °10.0′ | 67 °10.0′ |
| M10 | 41 °18.6′ | 66 °24.8′ |
| M11 | 40 °55.5′ | 66 °38.0′ |
| M12 | 40 °45.5′ | 68 °00.0′ |
| M13 | 40 °37.0′ | 68 °00.0′ |
| M14 | 40 °30.0′ | 69 °00.0′ |
| M15 | 40 °22.7′ | 69 °00.0′ |
| M16 | 40 °18.7′ | 69 °40.0′ |
| M17 | 40 °21.0′ | 71 °03.0′ |
| M18 | 39 °41.0′ | 72 °32.0′ |
| M19 | 38 °47.0′ | 73 °11.0′ |
| M20 | 38 °04.0′ | 74 °06.0′ |
| M21 | 37 °08.0′ | 4 °46.0′ |
| M22 | 36 °00.0′ | 74 °52.0′ |
| M23 | 35 °45.0′ | 74 °53.0′ |
| M24 | 35 °28.0′ | 74 °52.0′ |

(4) Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 7/8 inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (c) and (d) of this section, when the vessel is landward of the specified coordinates.

[FR Doc. E6–12482 Filed 8–1–06; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 71, No. 148
Wednesday, August 2, 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 27, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Risk Management**

*Title:* Organic Transition Simulation Model (OTSM) and Online Training Course.

*OMB Control Number:* 0563–NEW.

*Summary of Collection:* Under the provisions of section 522(d) of the Federal Crop Insurance Act the U.S. Department of Agriculture, Federal Crop Insurance Corporation operating through the Risk Management Agency authorized a partnership with The Rodale Institute for the development of risk management tools for use directly by agricultural producers. The goal of the partnership is to develop an Organic Transition Simulation Model to help farmers analyze a variety of risk factors and costs assessing the relative economic benefits of organic versus conventional systems over time; and a transition to organic course for farmers and Extension specialists to train producers and educators in the basics of organic production and marketing.

*Need and Use of the Information:* The product development data collection is necessary to obtain feedback from experts and potential users of a Web-based simulation model designed to assist farmers and agricultural extension specialists in understanding the economic and environmental consequences in making a transition from traditional to organic production techniques. Results of this collection will be used to revise and improve the simulation model. The program evaluation component of the data collection is required to assess the effectiveness of the fully developed simulation model and the accompanying training course.

*Number of Respondents:* 2,060.

*Description of Respondents:* Farms; Individuals or households.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 1,110.

**Charlene Parker,**

*Departmental Information Clearance Officer.*

[FR Doc. E6–12407 Filed 8–1–06; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 27, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Farm Service Agency**

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560–0097.

*Summary of Collection:* The Agricultural Foreign Investment Disclosure Act (AFIDA) requires foreign

investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land to the U.S. Department of Agriculture (USDA). Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site. Investors are required to file a report within 90 days of the acquisition, transfer, or change in the use of their land.

*Need and Use of the Information:* The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 4,375.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 904.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–12408 Filed 8–1–06; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket Number FV–06–312]**

### Request for an Extension to a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of the currently approved information collection for Regulations Governing Inspection, Certification and Standards for Fresh Fruits and Vegetables, and Other Products.

**DATES:** Comments on this notice must be received on or before October 2, 2006, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Kathleen A. Staley, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Phone (202) 720–2482, Fax (202) 720–0393; E-mail *Kathleen.Staley@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products 7 CFR part 51.

*OMB Number:* 0581–0125.

*Expiration Date of Approval:* March 31, 2007.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The Agricultural Marketing Act of 1946, as amended 7 U.S.C. 1621 *et seq.* authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered, under 7 CFR part 51. The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers, and other financially interested parties on a ''user fee'' basis. This use of this service is voluntary and is made available only upon request or when specified by some special program or contract. Information is needed to carry out the inspection and grading services. Such information includes: the name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .03 hours per response.

*Respondents:* Shippers, importers, processors, sellers, buyers, and others with a financial interest in lots of fresh fruits, vegetables and other products.

*Estimated Number of Respondents:* 56,980.

*Estimated Number of Responses per Respondent:* .5.

*Estimated Total Annual Burden on Respondents:* 8,942.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kathleen A. Staley, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–0393. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 27, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–12409 Filed 8–1–06; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest, Northern Hills Ranger District, SD, Citadel Project Area Proposal and Analysis

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement on a proposal to implement multiple resource management actions within the Citadel Project Area as directed by the amended Black Hills National Forest Land and Resource Management Plan. The Citadel Project Area covers approximately 28,000 acres of National Forest System land and approximately 5,500 acres of interspersed private land southwest of Spearfish, South Dakota. proposed actions include a combination of vegetation and fuels treatments to reduce crown fire risks, reduce

mountain pine beetle susceptibility, and improve wildlife habitat (particularly big game winter range). The proposed vegetative management actions include 11,000 acres of *commercial thinning,* 2,600 acres of *overstory removal,* 2,100 acres of *pre-commercial thinning,* 860 acres of *commercial seed cuts,* 200 acres of *mechanical fuel treatments,* and up to 14,000 acres of *prescribed burning.*

**DATES:** Comments concerning the scope of the analysis must be received by September 1, 2006. The draft environmental impact statement is expected to be available December 2006 and the final environmental impact statement is expected to be completed by March 2007.

**ADDRESSES:** Send written comments to: Jane Eide, Acting District Ranger, Black Hills National Forest, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642–4622, e-mail: *comments-rocky-mountain-black-hills-northern-hills@fs.fed.us* with ''Citadel'' as the subject.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Stiller, District Planner, Black Hills National Forest, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642–4622.

**SUPPLEMENTARY INFORMATION:**

*Purpose of and Need for Action:* The purpose of and need for the actions proposed in the Citadel Project is to: Reduce the acres at high or medium risk for crown fire; Reduce acres of high or medium susceptibility to mountain pine beetle; and Improve wildlife habitat with an emphasis on big game winter range. All actions are intended to move toward or achieve related Forest Plan Goals and Objectives, consistent with Forest Plan Standards and Guidelines.

*Proposed Action:* Proposed actions include the following:

Reduce the acres at high or medium risk for crown fire by thinning stands to decrease crown proximity. Thinning may use commercial or non-commercial methods. Fuel reduction treatments could include lopping, chipping, crushing, piling and burning, construction of fuel breaks, and broadcast prescribed burning.

Reduce acres at high or medium susceptibility to mountain pine beetle by thinning stands and changing stand structure. Commercial and non-commercial (including burning) methods may be used.

Improve wildlife habitat by understory thinning or removal to encourage increased and improved forage. Non-commercial methods of prescribed burning, cutting, and chopping may be used. Improve old growth characteristics by understory treatment which includes cutting, chopping, and burning.

*Responsible Official:* District Ranger, Black Hills National Forest, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783.

*Nature of Decision To Be Made:* The decision to be made is whether or not to implement the proposed action or alternatives at this time.

*Scoping Process:* Comments and input regarding the proposal were requested from the public, other groups, and other agencies via direct mailing and a public meeting in May/June 2006. The comment period remains open through September 1, 2006. Also, response to the draft EIS will be sought from the interested public beginning approximately December 2006.

*Comment Requested:* This notice of intent initiates the scoping process which guides the development of the environment impact statement. It is our desire to involve interested parties and especially adjacent landowners in identifying the issues related to proposed activities. Comments will assist in identification of key issues and opportunities to develop project alternatives and mitigation measures.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days (beginning approximately December 1, 2006) from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addressed of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: July 26, 2006.

**Craig Bobzien,**

*Forest Supervisor.*

[FR Doc. 06–6632 Filed 8–1–06; 8:45am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[Order No. 1468]**

### Approval for Expanded Manufacturing Authority, (Printer Cartridges and Thermal Media), Within Foreign–Trade Subzone 141A, Eastman Kodak Company, Rochester, New York Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

*Whereas*, Monroe County, New York, grantee of Foreign–Trade Zone 141, has applied to expand the scope of manufacturing authority under zone procedures within Subzone 141A, at the Eastman Kodak Company (Kodak) plant located at sites in the Rochester, New York area, to include additional finished products (printer cartridges and thermal media) (FTZ Docket 36–2005, filed 8/1/2005; amended 5/15/2006);

*Whereas*, notice inviting public comment has been given in the **Federal**

**Register** (70 FR 46475–46476, 8/10/2005); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

*Now, therefore*, the Board hereby approves the request for expanded manufacturing authority related to printer cartridges and thermal media, as described in the amended application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that privileged foreign status (19 CFR Part 146.41) shall be elected:

1. On foreign merchandise that falls under HTSUS headings or subheadings 2821, 2823, all of Chapter 32 or 3901.20 or where the foreign merchandise in question is described as a ''pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''
2. On foreign merchandise that falls under HTSUS heading 4202, with the exception of merchandise classified in HTSUS categories 4202.91.0090 and 4202.92.9060.

Signed at Washington, DC, this 26th day of July 2006.

**David M. Spooner,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Acting Executive Secretary.*

[FR Doc. E6–12477 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[Order No. 1469]**

### Grant of Authority for Subzone Status, Eastman Kodak Company, (X–ray Film, Color Paper, Digital Media, Inkjet Paper, Entertainment Imaging, and Health Imaging), White City and Medford, Oregon

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, Jackson County, Oregon, grantee of Foreign–Trade Zone 206, has made application to the Board for authority to establish special–purpose subzone status at the manufacturing, warehousing, and distribution facilities (X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging) of the Eastman Kodak Company, located in White City and Medford, Oregon (FTZ Docket 38–2005, filed 8/5/2005; amended 5/15/2006);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (70 FR 48535–48536, 8/18/2005); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

*Now, therefore*, the Board hereby grants authority for subzone status for activity related to X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging at the manufacturing, warehousing, and distribution facilities of the Eastman Kodak Company, located in White City and Medford, Oregon (Subzone 206A), as described in the amended application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that privileged foreign status (19 CFR Part 146.41) shall be elected:

1. On foreign merchandise that falls under HTSUS headings or subheadings 2821, 2823, all of Chapter 32 or 3901.20 or where the foreign merchandise in question is described as a ''pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''
2. On foreign merchandise that falls under HTSUS heading 4202, with the exception of merchandise classified in HTSUS categories 4202.91.0090 and 4202.92.9060.

Signed at Washington, DC, this 26th day of July 2006.

**David M. Spooner,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Acting Executive Secretary.*

[FR Doc. E6–12479 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[Order No. 1470]**

### Approval of Expansion of Subzone 84C and of Expanded Manufacturing Authority (Crop Protection Products), E.I. du Pont de Nemours and Company, Inc., La Porte, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Port of Houston Authority, grantee of Foreign–Trade Zone 84, has applied to expand Subzone 84C, at the E.I. du Pont de Nemours and Company, Inc. (Du Pont) plant located at one existing site and one proposed site in La Porte, Texas, and to expand the scope of manufacturing authority under zone procedures for Subzone 84C to include additional finished products (crop protection products) (FTZ Docket 26–2005, filed 5/27/2005);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (70 FR 34446, 6/14/2005); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

*Now, therefore*, the Board hereby orders:

The application to expand Subzone 84C, including one additional site, and for expanded manufacturing authority related to crop protection products, as described in the application and **Federal Register** notice, is hereby approved subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 2006.

**David M. Spooner,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Acting Executive Secretary.*

[FR Doc. E6–12481 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–904**

### Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Activated Carbon from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–5403, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Postponement of Preliminary Determination

On March 28, 2006, the Department of Commerce (''Department'') initiated the antidumping duty investigation of certain activated carbon from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Certain Activated Carbon From the People's Republic of China*, 71 FR 16757 (April 4, 2006). The notice of initiation stated that the Department would make its preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation.

On July 21, 2006, Calgon Carbon Corporation and NORIT Americas Inc. (''Petitioners'') made a timely request pursuant to 19 CFR 351.205(e) for a fifty–day postponement of the preliminary determination, until October 4, 2006. Petitioners requested postponement of the preliminary determination to allow the Department additional time in which to review the complex questionnaire responses and issue requests for clarification and additional information.

For the reasons identified by the Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), by fifty days to October 4, 2006. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 26, 2006.

**David Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–12474 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Extension of Time Limit for the Final Results of the 14th Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–9068.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 8, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, covering the period February 1, 2004, through January 31, 2005. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 11580 (March 8, 2006).

#### Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the antidumping duty order. The Act further provides that the Department shall issue the final results of a review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days.

On June 9, 2006, the Department extended the deadline for issuing the final results by 25 days, from July 6, 2006, to July 31, 2006. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Extension of Time Limit for the Final Results of the 14th Antidumping Duty Administrative Review*, 71 FR 33438 (June 9, 2006). The Department determines that the completion of the final results of this review by the original extended deadline is not practicable. As noted in the first extension notice, the Department requires additional time to analyze comments regarding the four companies involved in the instant review, each of which exported subject merchandise in at least one of the four classes or kinds of merchandise covered by this order, along with complex affiliation and agent sale issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of this review by 35 days. Since a 35–day extension would result in the deadline for the final results falling on September 4, 2006, which is a federal holiday, the new deadline for the final results will be the next business day, September 5, 2006. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: July 26, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–12470 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 072706C]**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States

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

**ACTION:** Notice of receipt of an application for an exempted fishing permit; request for comments.

**SUMMARY:** NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Scott Baker on behalf of the North Carolina Sea Grant Extension Program. If granted, the EFP would authorize the applicant, with certain conditions, to collect limited numbers of black sea bass in South Atlantic Federal waters off the coast of North Carolina. The purpose of the study is to quantify fish size selectivity by sea bass pot type and determine regulatory discard mortality rates.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on September 18, 2006.

**ADDRESSES:** Comments on the application may be sent via fax to 727–824–5308 or mailed to: Mark Sramek, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may also be submitted by E-mail. The mailbox address for providing E-mail comments is *Black.Sea.Bass@noaa.gov*. Include in the subject line of the E-mail document the following text: Comment on NC Sea Grant EFP Application. The application and related documents are available for review upon written request to the address above or the E-mail address below.

**FOR FURTHER INFORMATION CONTACT:** Mark Sramek, 727–824–5311; fax 727–824–5308; E-mail: *Mark.Sramek@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, the North Carolina Sea Grant Extension Program receives federal funding through the National Sea Grant College Program, as well as state appropriations. Through research, education and outreach programs, North Carolina Sea Grant works with individuals, groups, government agencies and businesses to develop an understanding of the state's coastal environment and promote the sustainable use of marine resources.

The proposed collection for scientific research involves activities otherwise prohibited by regulations implementing the Fishery Management Plan for the Snapper-Grouper Fisheries of the South Atlantic Region (FMP).

The applicant requires authorization to harvest and possess black sea bass for scientific research activities during the period from October 1, 2006, through March 31, 2007. Specimens would be collected from Federal waters off the coast of North Carolina during the specified sampling period. Fish would be captured using standard and experimental modification designs to Council-approved sea bass pots used for the harvest of black sea bass in the South Atlantic region.

Three types of sea bass pots would be employed during the study: One standard-type pot constructed of 1.5–inch (3.8–cm) mesh with a 2–inch (5.1–cm) mesh back panel; a second, experimental-type pot constructed entirely of 2–inch mesh (5.1–cm) (both pot types are currently approved by the South Atlantic Fishery Management Council (Council) for commercial fishing for black sea bass); the third, control-type pot constructed entirely of 1.5–inch (3.8–cm) mesh with no escape vents. The purpose of the control-type pot is to provide an indication of the number and range of size classes of black sea bass present at each sample location. To avoid continued fishing activity and subsequent fish mortality in the event of lost pots, all three pot types will include a wire panel affixed with degradable fasteners. Control-type pots, as outlined above, will only be employed as part of this study and will not be utilized during normal commercial fishing operations. The study will employ a randomized fishing location design, or block, of three sea bass pots per block (one control-type, an experimental-type, and standard-type pots) within 10 blocks per trip. Individual pots will be randomly placed approximately 10 to 30 meters apart within each block; a total of 13 sampling trips will be performed from October 1, 2006, through March 31, 2007. All captured fish will be identified by species, measured, and released if undersized. Prior to release, the presence of barotraumatic effects on black sea bass will be recorded. No undersized fish will be retained in this study.

NMFS finds that this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number of sea bass pots to be employed; restrictions on the placement of sea bass pots; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates, and/or seasons allowed for collection of particular fish species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws. The applicant requests a 6-month effective period for the EFP.

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

Dated: July 28, 2006.

**James P. Burgess,**

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

[FR Doc. E6–12411 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 071906A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges through the Beaufort Sea between West Dock and Cape Simpson or Point Lonely, Alaska

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a barging operation within the U.S. Beaufort Sea has been issued to FEX

L.P. (FEX), a subsidiary of Talisman Energy, Inc., for a period of 1 year.

**DATES:** Effective from August 8, 2006 through August 7, 2007.

**ADDRESSES:** The authorization and application containing a list of the references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The application is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

## Summary of Request

On April 5, 2006, NMFS received an application from ASRC Energy Services, Lynx Enterprises, Inc. (AES Lynx) on behalf of FEX for the taking of several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be transporting drilling rig(s), consumables, fuel, essential construction equipment and supplies from the West Dock Causeway to Cape Simpson or Point Lonely. Equipment would be staged and stored in preparation for the upcoming winter on-shore oil and gas drilling and testing season. Barges proposed for the marine lift from the West Dock Causeway include but are not limited to: Crowley Marine *Kavik River* and the *Sag River* (1,100 horsepower each) tugs, and *Bowhead Stryker* or *Garrett* (two engines x 220 horsepower each) barges or comparable class vessels. Additional barges and support vessels may be utilized as available and needed. Barges would be moving at a speed at about 5 - 6 knots. From West Dock Causeway, it would take approximately 17.5 hours one way for a barge to reach Point Lonely and 22 hours to Cape Simpson. FEX plans to start barging activities in the summer of 2006, would make every effort to avoid periods of bowhead whale fall westward migration and subsistence activities, and would complete the barging by September 1, 2006. Ice, weather conditions, and other possible operational considerations may affect the timing of the barge activity, resulting in some activities taking place beyond the scheduled target dates. If necessary, a late season barging effort may be required after September 1, 2006. FEX has entered a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) to obtain approvals from AEWC if barging activities occur during the September 1 - October 15 subsistence whaling period. Operations to support winter on-shore drilling operations may include a winter trail on landfast sea ice. FEX has determined that this operation will not result in incidental takes of marine mammals.

## Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on June 13, 2006 (71 FR 34064). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission). The Commission recommends issuance of the IHA provided that

(1) All reasonable measures be taken to ensure the least practicable impact on the subject species, and

(2) The required mitigation and monitoring activities (i.e., the use of native advisors, the comprehensive training of all marine mammal observers, and on-board monitoring throughout the transit operations) are carried out as described in NMFS' June 13, 2006, **Federal Register** notice (71 FR 34064) and the application.

NMFS agrees with the Commission's recommendation and has incorporated these mitigation and monitoring measures in the IHA.

In its comments, the Commission noted that, although similar activities occur regularly in the areas occupied by marine mammals, not all organizations involved in those activities make an effort to obtain proper authorization. The Commission commends FEX and Talisman Energy, Inc., for seeking an authorization. In addition, the Commission commends the companies for discussing the proposed activities with Alaska native groups whose subsistence use of marine mammals could be affected.

## Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (*Balaena mysticetus*), Beaufort Sea stock of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as ''depleted'' under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Lodge, 2004). A brief description of the distribution,

movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/sars/species.htm*. The FEX application is also available on-line (see **ADDRESSES**).

**Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals**

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due to the slow tow speed (5 - 6 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Shelden and Rugh, 1995). A few transitory whales may be encountered during the transits. Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals would also be taken by Level B harassment during transit. Spotted seals may be present in the West Dock/Prudhoe Bay area, but it is likely that they may be closer to shore and, therefore, are not expected to be harassed during transit phase.

**Numbers of Marine Mammals Expected to Be Taken**

The number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable. However, due to the small size of the area that the barging activities will cover, it is expected that only small numbers of marine mammals would be affected. Operations are scheduled to occur prior to the westward migration and associated subsistence bowhead whale hunts to purposely avoid any take of this species. Noise disturbance from vessels might qualify as harassment to marine mammals, but previous surveys have indicated little behavioral reaction from these animals to slow-moving vessels.

**Effects on Subsistence Needs**

Residents of the village of Barrow are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (McLaren 1958, Nelson 1969). The Barrow fall bowhead whaling grounds, in some years, includes the Cape Simpson and Point Lonely areas (e.g. the 1990 season, when a large aggregation of feeding bowheads were pursued by Barrow hunters).

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island (149° 40′ W). Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operation, the harassment of these seals is not expected to have an unmitigable adverse impact on the availability of ringed and bearded seals for subsistence uses because: (1) Transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters (however, the Northstar vicinity is outside the areas used by subsistence hunters (Williams and Moulton, 2001)); (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals; and (5) the barging, as scheduled, will be completed prior to beginning of the fall westward migration of bowhead whales and the associated subsistence activities by the local whalers.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

While no impact is anticipated on the availability of marine mammal species and stocks for subsistence uses, FEX has entered a CAA with the AEWC for any of the barging activities that may occur during the subsistence whaling period from September 1 - October 15. The FEX's activities will comply with the CAA prior to the autumn bowhead hunt by the residents of Kaktovik (Barter Island), Nuiqsut (Cross Island) and Barrow Native villages. Ice, bad weather conditions, and other possible operational considerations may affect the timing of the barge activity and may require that some activities take place beyond the scheduled target dates.

**Mitigation and Monitoring**

FEX will mitigate any potential negative impacts from its barging operation by conforming with the CAA with native whalers and operations as per the Plan of Operations. Other mitigation measures include use of native subsistence advisor/marine mammal observers trained by qualified marine biologists and communications with subsistence whaling activities so as to avoid deflection or other disturbances to migrating mammals and subsistence hunting activities.

During all tug/barging operations, FEX will have on-board marine mammal monitors throughout the transit. As proposed in its application, FEX will conduct a visual monitoring program for assessing impacts to marine mammals during the barge transits. FEX will initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where FEX will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program.

The observer protocol will be to scan the area around vessels with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to FEX activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24–hour basis.

**Reporting**

All monitoring data collected will be reported to NMFS on a weekly basis. FEX must provide a final report on 2006 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

**ESA Consultation**

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes the proposed activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this IHA on bowhead whales has been compared with the analysis contained in the 2001 biological opinion. NMFS has determined that the effects of the current activity are consistent with the findings of that biological opinion, and, accordingly, NMFS has issued an Incidental Take Statement under section 7 of the ESA.

**National Environmental Policy Act (NEPA)**

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (Final EIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and Final EISs, and subsequently, on May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. Because the barging activity discussed in the Final EIS is not substantially different from the proposed action by FEX, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, no additional NEPA analysis is required.

**Conclusions**

NMFS has determined that the impact of conducting a short-term barging operation between West Dock, Prudhoe Bay and Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a temporary modification in behavior by certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues from the barging operation, this behavioral change is expected to have a negligible impact on the annual rate of survival and recruitment of marine mammal stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

The principal measures undertaken to ensure that the barging operation will not have an unmitigable adverse impact on subsistence activities is a CAA between FEX, the AEWC and the Whaling Captains Association, a Plan of Cooperation, and an operation schedule that will not permit barging operations during the traditional bowhead whaling season.

**Determinations**

NMFS has issued an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to Cape Simpson or Point Lonely. This IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that this activity would result in the harassment of small numbers of bowhead whales, beluga whales, ringed seals, bearded seals and spotted seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence.

**Authorization**

NMFS has issued an IHA to FEX L.P. to take small numbers of marine mammals incidental to conducting a barging operation within the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 28, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E6–12476 Filed 8–1–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of the Record of Decision for the Construction and the Operation of a Battle Area Complex and a Combined Arms Collective Training Facility Within U.S. Army Training Lands in Alaska

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** The Army announces the availability of its Record of Decision (ROD) for the construction and operation of a Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF) within U.S. Army training lands in Alaska, and the execution of routine, joint military training at these locations. Or June 14, 2006, the Army published a notice of availability of its Final Environmental Impact Statement (EIS) that considered the environmental consequences of the proposed action and alternatives. The ROD was signed in July 2006 and was prepared pursuant to the National Environmental Policy Act (NEPA). The ROD explains and finalizes the Army's decision to proceed with construction and operation of the BAX and CACTF at Eddy Drop Zone. This decision was based on the analysis described in the Final EIS, supporting studies, and comments provided during formal comment and review periods.

The decision also affirms the Army's commitment to implementing a series of mitigation and monitoring measures to offset potential adverse environmental impacts associated with the selected action, as identified in the Final EIS.

**FOR FURTHER INFORMATION CONTACT:** Major Kirk Gohlke, Public Affairs Officer, U.S. Army, Alaska, telephone: (907) 384–1542; facsimile: (907) 384–2060; e-mail: *kirk.gohle@richardson.army.mil*.

**SUPPLEMENTARY INFORMATION:** U.S. Army, Alaska (USARAK) will construct and operate two state-of-the-art, fully automated and instrumented combat training facilities. This involves the construction and operation of a BAX (rural environment) and CACTF (urban environment) at Eddy Drop Zone. The BAX will encompass approximately 2,872 acres and the CACTF will encompass 1,184 acres of land suitable for the construction and operation of these ranges. In addition, surface danger zones are required for both the BAX and CACTF.

The purpose of the action is to provide year-round, fully automated, comprehensive, and realistic training and range facilities, which, in combination, will support company (200 Soldiers) through battalion (800 Soldiers) combat team training events. The construction and operation of a BAX and CACTF at Eddy Drop Zone will support required higher levels of realistic combat in both urban and rural environments. Automated facilities will be used to provide timely feedback that is critical to effective training.

The BAX and CACTF will fully train Soldiers for war by maintaining unit readiness and availability in recognition of the threats facing our nation and the world today. The BAX will support company combat team live-fire operations on a fully automated rural maneuver range and will provide for joint combined arms team training with other Department of Defense organizations. The CACTF will support battalion combat team training and joint operations in an urban environment.

The ROD includes a description of environmental and cultural resource management, monitoring and mitigation programs.

The ROD and Final EIS are available at the following Web site: *http://www.usarak.army.mil/conservation*, or may be requested by contacting Major Kirk Gohlke (listed above).

**John M. Brown III,**

*Lieutenant General, USA, Commanding General, U.S. Army, Pacific.*

[FR Doc. 06–6639 Filed 8–1–06; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

**AGENCY:** Department of the Army, DoD

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. provisional patent number 60/723,442 filed October 5, 2005 entitled ''Small Molecule Inhibitors of Botulinum Neurotoxins,'' to Microbiotix, Inc. with its principal place of business at 1 Innovation Drive, STE 15, Worcester, Massachusetts 01605–4332.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06–6638 Filed 8–1–06; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License for a U.S. Army Owned Invention to MadahCom, Inc.

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice

**SUMMARY:** The Department of the Army announces that, unless there is an objection, after 15 days it will grant an exclusive license to MadahCom, Inc., a corporation having a place of business in Sarasota Florida, on ''System And Method For Tactical Centralized Event Warning/Notification For Individual Entities'', by Paul Manz of PM Battle Command, disclosure docket number—CECOM 5531; ''System And Method For Semi-Distributed Event Warning/Notification For Individual Entities'' by Paul Manz of PM Battle Command, disclosure docket number—CECOM 5530; ''System And Method For Tactical Distributed Event Warning/Notification For Individual Entities'' by Paul Manz of PM Battle Command and Fernando Maymi of the U.S. Military Academy (USMA), disclosure docket number—CECOM 5532; and ''System For Event Warning/Notification And Reporting For Individual Entities'' by Paul Manz of PM Battle Command and Fernando Maymi of USMA disclosure docket number—CECOM 5533.

Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**DATES:** File written objections by August 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy S. Ryan, Technology Transfer Program Manager, AMSRD–AAR–EMB, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, e-mail: *tryan@pica.army.mil;* (973) 724–7953.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed within 15 days from publication date of this notice in the **Federal Register**. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06–6646 Filed 8–1–06; 8:45am]

**BILLING CODE 3710–08–M**

## 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 September 1, 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 27, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

**Office of Postsecondary Education**

*Type of Review:* Revision of a currently approved collection.

*Title:* U.S.–Brazil Higher Education Consortia Program (1890–0001) (JS).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 30.

*Burden Hours:* 180.

*Abstract:* The U.S.–Brazil Higher Education Consortia Program is a competition grant program which supports institutional cooperation and student exchanges of colleges and universities in the U.S. and Brazil. Funding is multi-year with international consortia projects lasting up to 4 years.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 03162. 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* 202–245–6566. 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. E6–12402 Filed 8–1–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Next Generation Lighting Initiative: Commercial Application Activities

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of availability.

**SUMMARY:** The Energy Policy Act of 2005, section 912, established the Next Generation Lighting Initiative, and directed the Department of Energy (DOE or the Department) to ''support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.'' In partial fulfillment of the directive to support commercial application activities, the Department has initiated and planned a number of activities. In the interest of informing the public on the scope of the commercial application activities underway and planned, the Department developed a document entitled, ''Solid State Lighting: Commercialization Support Pathway.'' That document was recently updated, and is now publicly available. The document is printed with this notice.

**DATES:** ''Solid State Lighting: Commercialization Support Pathway,'' was first publicly distributed on February 1, 2005. It was subsequently updated and again publicly distributed on February 1, 2006. The document was updated once again on May 22, and is being made publicly available via this notice.

**FOR FURTHER INFORMATION CONTACT:** James Brodrick, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Program Office EE–2J, 1000 Independence Ave., SW., Washington, DC 20585–0121, (202) 586–1856. E-mail: *james.brodrick@ee.doe.gov.* Richard Orrison, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Program Office EE–2J, 1000 Independence Ave., SW., Washington, DC 20585–0121, (202) 586–1633. E-mail: *richard.orrison@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

**Solid-State Lighting: Commercialization Support Pathway**

*I. SSL R&D Investment Leads to Technology Commercialization*

The U.S. Department of Energy has made a long-term commitment to develop and support commercialization of SSL for general illumination, including sources, fixtures, electronics, and controls. In August 2005, President Bush signed the Energy Policy Act of 2005 (EPACT 2005), the first national energy plan in more than a decade. Title IX (Research and Development) of the Energy Act directs the Secretary of Energy to carry out a Next Generation Lighting Initiative (NGLI) to support research, development, demonstration, and commercial application activities for SSL.

The Secretary is also directed to carry out research, development, demonstration, and commercial application activities through competitively selected awards. The EPACT 2005 authorizes $50 million to the NGLI for each fiscal year 2007 through 2009, with extended authorization to allocate $50 million for each of the fiscal years 2010 to 2013. The actual Congressional appropriation for the NGLI will not be determined until fiscal year 2007.

This public R&D investment serves the ultimate goal to successfully commercialize the technologies in the buildings sector, where lighting accounts for more than 20 percent of total electricity use.

Potential benefits are enormous if SSL technology achieves projected price and performance levels:

• By 2025, SSL could displace general illumination light sources such as incandescent and fluorescent lamps, decreasing national energy consumption for lighting by about 0.45 quadrillion Btus (quads) annually, that is, enough

energy saved to serve the lighting demand of 20 million households today.

- The cumulative energy expenditure savings from 2005 to 2025 would translate into more than $25 billion dollars saved.

- The cumulative energy savings from 2005 to 2025 is projected to be more than 1.5 quads.

To realize the full promise of solid-state lighting by 2025, major research challenges must be addressed. To help tackle these challenges, DOE is funding selected R&D to improve energy efficiency and speed SSL technologies to market. Projects are selected to align with a comprehensive R&D plan developed in partnership with industry, research and academic organizations, and national laboratories. DOE has and will continue to maintain a focus on the ultimate goal of supporting commercialization of SSL technologies to decrease lighting energy use while improving and expanding lighting services. Unique attributes of SSL technologies underscore the importance of a long-term, coordinated approach encompassing applied research and strategic technology commercialization support.

For most general illumination applications, current white lighting emitting diodes (LEDs) cannot yet compete with traditional light sources on the basis of either performance or cost, but the technology is evolving rapidly. As a result of extensive R&D, the luminous efficacy of white LEDs has approximately doubled in the past three years. The timing and targeting of commercialization support efforts is as important to the ultimate success of SSL as current R&D investment. For this reason, DOE has created a comprehensive commercialization support plan, drawing on a variety of strategies to assist the market introduction of high-quality, energy-efficient SSL technologies.

*II. Commercialization Support Strategies*

DOE has a long-term vision for commercialization support of SSL technologies. Over the coming years, SSL technologies for general illumination will continue to improve and evolve, with luminous efficacy increasing and unit costs decreasing. Appropriate commercialization support strategies will be determined by the status of the technology relative to particular applications. Beginning in 2005, DOE initiated several activities as part of the long-term plan.

*A. Activities in Progress*

*Partnership With Industry*

EPACT 2005 directs DOE to partner, through a competitive selection process, with an industry alliance that represents U.S. SSL research, development, infrastructure, and manufacturing expertise. DOE is directed to solicit alliance assistance in identifying SSL technology needs, assessing the progress of research activities, and updating SSL technology roadmaps. In fulfillment of this directive, DOE signed a Memorandum of Agreement (MOA) with the Next Generation Lighting Industry Alliance (NGLIA) in 2005. Among a number of activities in the MOA, DOE with the Alliance will create criteria for voluntary market conditioning programs, such as ENERGY STAR ® for SSL (see next item). Alliance members include the major US-based manufacturers of LEDs, organic LEDs, components, materials, and systems.

*ENERGY STAR® for SSL*

DOE has initiated development of ENERGY STAR criteria for white LED-based lighting products intended for general illumination purposes. DOE envisions a two-category criteria, with the first category (Category A) covering a limited number of general illumination niche applications for which white LED systems are appropriate in the near-term, and the second category (Category B) intended to cover a wide range of LED systems for general illumination. Category B will serve as the longer term target for the industry. Initial applications eligible under Category A will include those with the following characteristics: (1) Appropriate for a light source with a directional beam, as opposed to a diffuse source; (2) low to moderate illuminance requirement; (3) illuminated task or surface relatively close to the light source; and (4) potential for cost-effective use of LED-based products in the near term.

*Support for Standards Development*

Solid state lighting differs fundamentally from incandescent, fluorescent, and HID lighting technologies, in terms of materials, drivers, system architecture, controls, and photometric properties. A host of new or revised test procedures and industry standards is needed to accommodate these technical differences. DOE is engaged in ongoing dialogue with the relevant standards organizations, and is providing technical assistance in the development of new standards.

*LED Fixture Design Competition*

DOE is one of the organizing sponsors of Lighting for Tomorrow (LFT), along with the American Lighting Association and the Consortium for Energy Efficiency. LFT design competitions in 2004 and 2005 were successful in encouraging, recognizing, and publicizing excellent new designs for energy-efficient residential decorative light fixtures. LFT's 2006 program includes a new competition for LED products in specific general illumination niche applications. Working prototype fixtures will be evaluated by an expert judging panel which will select winners on the basis of lighting quality, energy efficiency, fixture design, and style.

*Outreach to Federal Programs*

As the largest single purchaser of lighting products in the nation, the federal government can play an important role in demonstrating new technologies. Recently, DOE has provided information to more than 30 federal agencies through presentations to the Federal Utility Partnership Working Group, the Interagency Energy Management Task Force, and the Federal Energy Efficiency Working Group.

*Technology Tracking and Information Services*

DOE continues to track performance improvement in SSL technology over time. DOE also maintains a database of available white LED-based niche lighting products available in the market. This information is used to support DOE efforts to provide general information about pricing and availability trends of LED products.

*Consumer and Business Awareness Programs*

DOE is developing informational materials on LED technology and products for a general consumer and business audience. Fact sheets are being disseminated widely. More fact sheets on a wide range of LED topics are in development. Additional information of use to consumers and businesses is available online via DOE's SSL Web site at *www.netl.doe.gov/ssl/.*

*B. Planned Activities*

In addition to the activities already underway, DOE is planning a range of other initiatives over the next five years that will support commercialization of SSL technologies and products. These include the following:

*Technology Procurements*

Technology procurement is an established process for encouraging market introduction of new products that meet certain performance criteria. DOE has employed this approach successfully with other lighting technologies, including sub-CFLs and reflector CFLs. DOE plans to employ technology procurement to encourage new SSL systems and products that meet established energy efficiency and performance criteria, and link these products to volume buyers and market influencers. Volume buyers may include the federal government (FEMP, DLA, GSA), utilities, or various sub-sectors including hospitals, lodging, or retail.

*Demonstration and Performance Verification*

DOE will develop valuable information from SSL installations in various field applications through demonstration and performance verification, including design and installation issues and measurement of energy consumption, light output, color quality, and interface/control issues.

*Technical Information Network*

Working with key organizations and companies already involved in providing technical information to the market on energy-efficient technologies (such as energy efficiency organizations, electric utilities, state energy offices, and energy consulting companies), DOE plans to establish a network through which SSL technical information can be efficiently distributed to the market.

*University and Professional Education Programs*

DOE will support development of training materials and curricula for design professionals, including interior designers, lighting designers, and architects. To support development of the next generation of engineers and designers who will implement SSL, DOE will also support development of teaching materials and related information on SSL technologies for universities.

Issued in Morgantown, WV, on July 17, 2006.

**Eddie Christy,**

*Building and Industrial Technologies Division Director.*

[FR Doc. E6–12425 Filed 8–1–06; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 12581–001]**

## Cambria Somerset Authority; Notice of Surrender of Preliminary Permit

July 26, 2006.

Take notice that Cambria Somerset Authority, permittee for the proposed Que Pumped Storage Project, has requested that its preliminary permit be terminated. The permit was issued on December 15, 2005, and would have expired on November 30, 2008.[1] The project would have been located on the Quemahoning Creek, in Somerset County, Pennsylvania.

The permittee filed the request on July 14, 2006, and the preliminary permit for Project No. 12581 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12378 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP06–442–000]**

## El Paso Natural Gas Company; Notice of Tariff Filing

July 26, 2006.

Take notice that on July 21, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 375, to be effective July 10, 2006.

EPNG states that this tariff sheet is filed to establish rights and conditions for TSAs subject to Article 11.2 of EPNG's 1996 Settlement regarding out-of-zone charges, capacity release, and scheduling priorities.

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. E6–12374 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–433–004]**

## Energy West Development, Inc.; Notice of Compliance Filing

July 25, 2006.

Take notice that on July 13, 2006, Energy West Development, Inc. (Energy West) tendered for filing a cost and revenue study to comply with the requirements of the Commission's April 2, 2003 ''Order Issuing Certificates'' in *Energy West Development, Inc.*, 103 FERC ¶ 61,015 (2003).

[1] 113 FERC ¶ 62,214.

Energy West states that copies of the filing were served on parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 1, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12390 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP06–441–000]**

## Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 26, 2006.

Take notice that on July 21, 2006, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 2006:

Seventy-Eighth Revised Sheet No. 8A
Sixty-Ninth Revised Sheet No. 8A.01
Sixty-Ninth Revised Sheet No. 8A.02
Twenty-Ninth Revised Sheet No. 8A.04
Seventy-Second Revised Sheet No. 8B
Sixty-Fifth Revised Sheet No. 8B.01
Twenty-First Revised Sheet No. 8B.02

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12382 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP06–312–001]**

## Mississippi Canyon Gas Pipeline, LLC, Notice of Supplemental Filing

July 25, 2006.

Take notice that on July 18, 2006, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing a supplement to its April 19, 2006 filing in the captioned docket. Mississippi Canyon states that it is filing this supplement to clarify the description of six of the agreements filed with the Commission as part of the April 19 filing, and to request approval of an additional potentially non-conforming provision.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 1, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12391 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Project No. 2594–009]**

## Northern Lights, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping, Solicitation of Comments on the Pad and Scoping Document, and Identification Issues and Associated Study Requests

July 25, 2006.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2594–009.

c. *Dated Filed:* May 31, 2006.

d. *Submitted by:* Northern Lights, Inc.

e. *Name of Project:* Lake Creek Hydroelectric Project.

f. *Location:* On the Lake Creek near the city of Troy in Lincoln County, Montana. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Jon Shelby, General Manager, P.O. Box 269, 421 Chevy Street, Sagle, ID 83860, Phone: 1–800–326–9594 x124 or Mark Contor, Operations Manager, P.O. Box 269, 421 Chevy Street, Sagle, ID 83860, Phone: 1–800–326–9594 x134.

i. *FERC Contact:* Sean Murphy at 202–502–6145 or E-mail at *sean.murphy@ferc.gov.*

j. We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Northern Lights, Inc. was designated as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act on August 11, 2005.

m. Northern Lights, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via E-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Lake Creek Hydroelectric Project) and number (P–2594–009), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 23, 2006.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

**Scoping Meetings**

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

*Daytime Scoping Meeting*

*Date:* Wednesday, August 9, 2006.

*Time:* 1:30 p.m.

*Location:* Three Rivers Ranger District, Troy Ranger Station, 1437 North Highway 2, Troy, MT.

*Evening Scoping Meeting*

*Date:* Wednesday, August 9, 2006.

*Time:* 7 p.m.

*Location:* Troy United Methodist Church, 3rd Street, Troy, MT.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

**Site Visit**

The potential applicant and Commission staff will conduct a site

visit at the project on Wednesday, August 9, 2006, starting at 9 a.m.

**Meeting Objectives**

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12389 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[ Docket No. ID–4242–001]**

## Rajter, Leo C.; Notice of Filing

July 26, 2006.

Take notice that on July 21, 2006, Leo C. Rajter filed an application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825(b), 18 CFR part 45 of the Commission's Rules of Practice and Procedure and Order No. 664.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 21, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12377 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP06–424–000]**

## Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

July 25, 2006.

Take notice that on July 19, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP06–424–000, a request pursuant to sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to replace certain facilities and upon replacement, increase the maximum allowable operating pressure (MAOP) in the State of Kansas, under Southern Star's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Southern Star proposes to replace approximately 7.25 miles of 12-inch diameter pipeline with 10-inch pipe, a part of the Pittsburg Delivery Lateral or Line FD, located in Cherokee County, Kansas, and upon replacement, increase the MAOP from 260 psig to 720 psig, as described more fully in the request. Southern Star proposes to replace the entire 17.2 miles of pipe with 10-inch diameter pipeline in two phases over a two-year period. Southern Star states that the replacement project will include the installation of a pig launcher, which will allow for future cleaning and integrity testing of the lateral, when Phase II is completed with an associated pig launcher installed. Southern Star estimates the cost of the replacement project to be approximately $3,300,000.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Any questions regarding this application should be directed to David N. Roberts, Manager, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301, or call (270) 852–4654 or fax (270) 852–5010.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12392 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP05–317–004]**

### Texas Gas Transmission, LLC; Notice of Compliance Filing

July 26, 2006.

Take notice that on July 21, 2006, Texas Gas Transmission, LLC (Texas Gas) submitted a compliance filing pursuant to the provisions of Article IX, Report of Refunds, of the Stipulation and Agreement in the above-referenced docket, as approved by ''Order Approving Uncontested Settlement'' issued April 21, 2006 [Texas Gas Transmission, LLC, 115 FERC ¶ 61,092 (2006)], and to Subpart F of Section 154 of the Commission's regulations.

Texas Gas states that an abbreviated version of the filing was served on all affected parties and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12381 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP06–440–000]**

### Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

July 25, 2006.

Take notice that on July 20, 2006, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, the following tariff sheets to become effective September 1, 2006:

Fifteenth Revised Sheet No. 4C
Eighth Revised Sheet No. 5A
Tenth Revised Sheet No. 11
Seventh Revised Sheet No. 26
Eleventh Revised Sheet No. 37A
Tenth Revised Sheet No. 37B
Second Revised Sheet No. 39C
Eighth Revised Sheet No. 83
Original Sheet No. 83A
Original Sheet No. 83B
Original Sheet No. 83C

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12384 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL06–89–000]**

### Californians for Renewable Energy, Inc. Complainants v. California Independent System Operator Respondent; Notice of Complaint

July 26, 2006.

Take notice that on July 24, 2006, Californians for Renewable Energy, Inc. (CARE) filed a complaint against the California Independent System Operator Corporation (CAISO). CARE alleges that the CAISO provided testimony before the California Energy Commission in reference to a power plant siting application by the City and County of San Francisco, without complying with CAISO's articles of incorporation.

CARE asks the Commission to order the CAISO to rescind its findings and conclusions concerning the power plant application until it can issue conclusions without exceeding its statutory mandate as described in the CAISO's articles of incorporation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 14, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12375 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL06–88–000]**

### Dominion Nuclear Connecticut, Inc., Complainant v. the Connecticut Light and Power Company, Respondent; Notice of Complaint

July 26, 2006.

Take notice that on July 24, 2006, Dominion Nuclear Connecticut, Inc. (DNC), owner and operator of the Millstone Nuclear Power Station located in Waterford, Connecticut (Millstone) filed a formal complaint against The Connecticut Light and Power Company (CL&P) pursuant to section 206 of the Federal Power Act, and the Commission's rules and regulations, 18 CFR 385.206, alleging that CL&P unlawfully imposed charges for station power service it did not provide from December 1, 2005 through June 16, 2006, and has imposed and continues to impose retail service charges for Millstone after the December 1, 2005 effective date of DNC's notice terminating service.

DNC certifies that copies of the complaint were served on the contacts for CL&P as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 14, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12383 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL06–90–000]**

### PPL EnergyPlus, LLC, PPL Martins Creek, LLC, PPL Susquehanna, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC, Complainants; v PJM Interconnection, LLC, Respondent; Notice of Complaint

July 26, 2006.

Take notice that on July 25, 2006, PPL EnergyPlus LLC, and PPL Martins Creek, LLC, PPL Susquehanna, LLC, PPL Montour LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL University Park, LLC and Lower Mount bethel Energy, LLC (collectively, PPL) filed a formal complaint against PJM Interconnection, L.L.C. (PJM) pursuant to 18 CFR 385.206 and sections 206, 303, and 306 of the Federal Power Act, alleging, in part, that: (1) PJM impermissibly applied offer-caps to real-time market bids associated with combustion turbines (CTs) at seven locations owned by PPL that were operated for PJM on July 27, 2005; (2) PJM violated the Commission's requirements when it failed to request PPL to turn on CTs at PPL's Fishbach generating facility before PJM declared a maximum generation emergency on July 27, 2005; and (3) PJM improperly dispatched PPL's generation resources, miscalculated real-time energy market prices for energy to reflect market-based bids for energy supplied on July 27, 2005, and failed to comply with its payment obligations for energy supplied from PPL's resources on July 27, 2005.

PPL certified that copies of the complaint were served on the contacts for PJM, as listed on the Commission's list of Corporate Officials, as well as affected state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on August 24, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12376 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2195–011]**

## Clackamas River Hydroelectric Project; Portland General Electric Company Clackamas County, OR; Notice of Extension of Comment Date

July 26, 2006.

The public comment period for the Clackamas River Hydroelectric Project Draft Environmental Impact Statement (DEIS) issued June 16, 2006, by the Commission has been extended until 5 p.m. Eastern Time August 22, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12379 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

July 26, 2006.

a. *Type of Application:* Shoreline Management Plan.

b. *Project Number:* P–487–048.

c. *Date Filed:* July 7, 2006.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project (FERC No. 487).

f. *Location:* The project is located on the Wallenpaupack Creek and the Lackawaxen River in Pike and Wayne Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101. Phone: (610) 774–5996.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 25, 2006.

k. *Description of Application:* Under article 409 of the project license, the licensee has filed its proposed shoreline management plan for Commission approval. The plan incorporates existing standards, policies, and permitting processes for uses and activities located within the project boundary. The plan will assist the licensee in continuing to operate the project and manage the associated lands in compliance with the license requirements for recreation, safety and environmental protection while maintaining operational control over the impoundment for electrical generation. The plan includes a description of the permitting system for shoreline uses, access and maintenance, measures for stabilizing erosion, measures for cooperating with the multiple governing entities surrounding the project and coordinating adjacent land uses with shoreline uses, and measures for preserving the aesthetic quality of the shoreline.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE. Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p–487) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–487–048). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12380 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 25, 2006.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:* ORPC Maine, LLC, filed the application for Project No. 12680–000 at 3:07 p.m. on May 30, 2006. Additional information was filed on July 14, 2006.

The Passamaquoddy Tribe at Pleasant Point Reservation filed the application for Project No. 12710–000 at 10:25 a.m. on July 10, 2006.

ORPC Maine, LLC, filed the application for Project No. 12711–000 at 10:28 a.m. on July 10, 2006.

c. *Names of the projects:* Western Passage OCGen™ Power Project, Passamaquoddy Tribe Tidal Hydrokinetic Energy Project, Cobscook Bay OCGen™ Power Project. The projects would be located in the Western Passage in the Atlantic Ocean in Washington County, Maine. No dam, either existing or new, would be used for any of the projects.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For ORPC Maine, LLC, contact Ms. Mary McCann, Manager of Environmental Services, Devine Tarbell & Associates, Inc., 970 Baxter Blvd., Portland, ME 04103, phone (207) 775–4495. For the Passamaquoddy Tribe of the Pleasant Point Reservation, contact Steve Crawford, Environmental Director, Pleasant Point Passamaquoddy Tribe, Salkom Road, Route 190, P.O. Box 343, Perry, ME 04667, phone (207) 853–2600.

f. *FERC Contact:* Chris Yeakel, (202) 502–8132.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The Western Passage project proposed by ORPC Maine, LLC, would consist of: (1) 80 to 120 ocean current generation (OCGen™) modules each approximately 13 feet-wide, 49 feet-long, and 11 feet-high, consisting of, (2) an anchoring support structure, (3) two horizontally mounted turbines, (4) an integrated generator with a maximum capacity of 158 kilowatts, and (5) interconnection transmission lines. The Western Passage project proposed by ORPC Maine, LLC, would have an average annual generation of 28.8 to 43.2 gigawatt-hours and would be sold to a local utility.

The project proposed by the Passamaquoddy Tribe at the Pleasant Point Reservation would consist of: (1) 55 Underwater Electric Kite (UEK) units 10 feet-tall, 18 feet-wide, and 16 feet-long consisting of, (2) two counter-rotating runners, (3) a fish/bird/mammal protection screen and deterrent system, and (4) a proposed transmission line. The Passamaquoddy Tribe's project would have an average annual generation of 29.25 gigawatt-hours and would be sold to a local utility.

The Cobscook Bay project proposed by ORPC Maine, LLC, would consist of: (1) 100 to 150 ocean current generation (OCGen™) modules each approximately 13 feet-wide, 49 feet-long, and 11 feet-high, consisting of, (2) an anchoring support structure, (3) two horizontally mounted turbines, (4) an integrated generator with a maximum capacity of 158 kilowatts, and (5) interconnection transmission lines. The Cobscook Bay project proposed by ORPC Maine, LLC, would have an average annual generation of 36 to 54 gigawatt-hours, and would be sold to a local utility.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12385 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12698–000.

c. *Date filed:* June 15, 2006.

d. *Applicant:* Public Utility District No. 1 of Snohomish County, Washington.

e. *Name of Project:* Guemes Channel Tidal Energy Project.

f. *Location:* The project would be located in a section of Guemes Channel between Guemes Island and Fidalgo Island in Skagit County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Steven Klein, General Manager, P.O. Box 1107, 2320 California Street, Everett, WA 98206, (425) 783–8473.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 166 Tidal In Stream Energy Conversion (TISEC) devices consisting of, (2) rotating propeller blades 10 meters in diameter, (3) integrated generators with a capacity of 66 kW, (4) anchoring systems, (5) mooring lines, and (6) interconnection transmission lines. The project is estimated to have an annual generation of 28.5 gigawatt-hours per-year, which would be distributed by the Snohomish County Public Utility District.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE, Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12386 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12704–000.

c. *Date filed:* June 28, 2006.

d. *Applicant:* Tidewalker Associates.

e. *Name of Project:* Half-Moon Cove Tidal Power Project.

f. *Location:* The project would be located in Half-Moon Cove in the Cobscook Bay in Washington County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Dr. Normand Laberge, P.E., 46 Place Cove Road, Trescott, Maine 04652, phone (207) 733–5513.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A rock-fill dam with a clay core approximately 1210 feet-long with a crest elevation of approximately 27 feet above mean-sea-level, (2) three bulb-type turbines with a capacity of 4.5 MW each, (3) a concrete powerhouse located in the center of the dam, (4) interconnection transmission lines, and (5) appurtenant equipment. The project is estimated to have a total generation capacity of 13.5 megawatts, which would be distributed by a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE, Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12387 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepting for Filing and Soliciting Motions To Intervene, Protests and Comments

July 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12707–000.

c. *Date filed:* July 3, 2006.

d. *Applicant:* Hook Canyon Energy, LLC.

e. *Name of Project:* Hook Canyon Pump Storage Project.

f. *Location:* On Fish Hook Creek, in Rich County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834. Dr. Vincent Lamarra, Director, Ecosystems Research Institute, Inc., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12707–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 160-foot-high concrete dam; (2) a reservoir with a surface area of 65 acres, and a storage capacity of 1,210 acre-feet at normal maximum water surface elevation; (3) a proposed 144-inch diameter, 4,600-foot-long steel penstock; (4) a proposed powerhouse containing two generating units having an installed capacity of 60 MW; (5) a switchyard; (6) a proposed 10.6 miles of 67-kV transmission line, and (7) appurtenant facilities.

The project would have an estimated annual generation of approximately 175 GWh. The applicant plans to sell the generated energy.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The

term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letter the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT'', or ''COMPETING APPLICATION'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6–12388 Filed 8–1–06; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Eastern Plains Transmission Project, Colorado and Kansas

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of intent to prepare an environmental impact statement; floodplain and wetlands involvement; and public scoping meetings.

**SUMMARY:** The U.S. Department of Energy (DOE), Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) for its proposal to participate with Tri-State Generation and Transmission Association, Inc. (Tri-State), to construct the proposed Eastern Plains Transmission Project (Project). Western's participation with Tri-State would be in exchange for capacity rights on the transmission lines. These rights would provide Western with approximately 275 megawatts (MW) of capacity on the proposed transmission system. Western needs this additional transmission capacity to provide more economical, reliable, diverse, and flexible power delivery to its customers. The EIS will address the construction, operation, and maintenance of approximately 1,000 miles of high-voltage transmission lines and ancillary facilities. In addition, the EIS will address expansions of existing substations and construction of new substations, access roads, and fiber optic communication facilities.

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) and DOE NEPA Implementing Procedures. Because the Project could involve action in a floodplain, the EIS will address floodplain and wetlands impacts under DOE regulations for compliance with floodplain and wetlands environmental review.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates and locations. The public scoping period will close September 30, 2006.

**ADDRESSES:** Written comments, questions, and information on the scope of the Project may be mailed, faxed, or e-mailed to Mr. Jim Hartman, Environmental Manager, Western Area Power Administration, Rocky Mountain Region, P.O. Box 3700, Loveland, CO 80539; fax (970) 461–7213; or e-mail *eptp@wapa.gov.* Project and contact information will also be updated regularly on the Project Internet site at *http://www.wapa.gov/transmission/eptp.htm.*

**FOR FURTHER INFORMATION CONTACT:** For further information or to request copies of the EIS, contact Mr. Hartman at the addresses provided or telephone the Project hotline toll-free at (888) 826–4710. For general information on DOE's NEPA review procedures or the status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone (202) 586–4600 or (800) 472–2756; or fax (202) 586–7031.

**SUPPLEMENTARY INFORMATION:**

#### Background and Need for Agency Action

Western, as an agency within DOE, markets Federal hydro-electric power to preference customers, as specified by law. They include municipalities, cooperatives, public utility and irrigation districts, Federal and state agencies, and Native American tribes in 15 Western states, including Colorado and Kansas. Western currently lacks adequate transmission capability in southeastern Colorado to serve its customers directly. Western needs additional transmission system capacity to provide more economical, reliable, diverse, and flexible power delivery to its customers. The Project would provide Western with improved access to alternative resources and suppliers by expanding the capacity and geographic reach of the transmission system. It would increase Western's options for purchasing energy to meet contractual requirements. Enhancing and expanding transmission pathways would contribute to ensuring reliability of the Federal transmission system.

Tri-State is a wholesale electric power supplier, owned by the 44 electric cooperatives it serves. Tri-State and the member utilities serve customers throughout Colorado, Nebraska, New Mexico, and Wyoming. Tri-State's board of directors approved a resource development plan, which includes generation in Kansas and Colorado and construction of a transmission system to deliver the generation to customers. The transmission portion of Tri-State's resource plan presents an opportunity for Western to obtain transmission capacity to meet Western's needs.

Western will prepare the EIS according to NEPA requirements, including the Council on Environmental Quality's NEPA Implementing Regulations under 40 CFR parts 1500–1508 and DOE's NEPA Implementing Procedures under 10 CFR part 1021. Because the Project could involve construction activities in floodplains and wetlands, the EIS will include floodplain and wetland assessments and a statement of findings, following DOE regulations for compliance with floodplain and wetlands environmental review under 10 CFR part 1022.

**Proposed Action and Alternatives**

Western's proposed Project activities include construction planning and management for approximately 1,000 miles of high voltage transmission lines, and acquiring rights-of-way for transmission lines, access roads, and other facilities. In addition to the transmission lines and access roads, the Project includes four new substations; expansions of approximately eight existing substations; and installing a fiber optic communications system for the transmission lines.

Preliminary locations of transmission line corridors and new substations have been identified and will be presented at the public scoping meetings. The EIS will evaluate the effects of constructing, operating, and maintaining approximately 750 miles of 500-kilovolt (kV) transmission lines and approximately 250 miles of 230- or 345-kV transmission lines; constructing four new substations; expanding eight existing substations; installing a fiber-optic communication system for the transmission lines; and constructing and maintaining associated access roads. The Project study area includes part or all of the following counties in Colorado: Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Kiowa, Kit Carson, Lincoln, Morgan, Otero, Prowers, Pueblo, Washington, and Yuma; and in Kansas: Finney, Greeley, Hamilton, Kearny, Logan, Scott, Sherman, Thomas, Wallace, and Wichita.

Among the alternatives Western will address in the EIS is the no action alternative. Under the no action alternative, Western would not participate in the Project. The EIS will evaluate the environmental effects of constructing, operating, and maintaining the Project and compare them to existing conditions. Alternative transmission line routes and substation locations will be refined as part of the EIS scoping process and addressed in the EIS. Western will consider additional reasonable alternatives resulting from the scoping process. Reasonable alternatives would need to meet Western's purpose and need and be technically and economically viable.

**Connected and Cumulative Actions**

Western will evaluate connected and cumulative actions in the EIS. Connected actions are defined under 40 CFR 1508.25(a)(1) as, ''* * * closely related * * * [that] (i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; [or] (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.'' Western has determined that connected actions for the Project include activities associated with the construction, maintenance, and operation of the proposed transmission line and ancillary facilities, including eight substation expansions, four new substations, associated access roads, and fiber optic communications facilities.

Cumulative actions are defined in 40 CFR 1508.25(a)(2) as those, ''* * * which when viewed with other proposed actions have cumulatively significant impacts. * * *'' Western has determined that cumulative actions for the Project include Tri-State's proposed generation projects as well as other past, present, and reasonably foreseeable projects.

**Identification of Environmental Issues**

Western invites interested agencies, Tribes, organizations, and members of the public to submit comments or suggestions to assist in identifying the appropriate scope of the EIS. The following list of potential environmental issues has preliminarily been identified for inclusion in the EIS. This list is designed to help the public frame its comments:

1. Effects on protected, threatened, endangered, or sensitive species of animals or plants; or their critical habitats;
2. Effects on other biological resources;
3. Effects on land use, recreation, and transportation;
4. Effects on floodplains and wetlands;
5. Effects on cultural or historic resources and Tribal values;
6. Effects on human health and safety (including military, civilian, and agricultural aviation safety);
7. Effects on air, soil, and water resources;
8. Effects on agricultural operations;
9. Effects on visual resources; and
10. Effects on socioeconomic resources and disproportionately high and adverse impacts on minority and low-income groups.

This list is not intended to be all-inclusive or to imply predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories or other issues not included above for consideration in the EIS.

**Scoping Process**

With this Notice of Intent, Western invites public participation in the EIS scoping process and solicits public comments to help establish the scope and content of the EIS. Scoping will allow Western to obtain information that will refine the preliminary Project alternatives; identify environmental issues to be considered in the EIS; and help eliminate, from detailed study, those alternatives and issues that are not feasible or relevant. To be assured consideration, all comments on the scope of the EIS must be received by the end of the scoping period.

**Meetings**

*The dates and meeting locations are:*

1. August 28, 2006, Carroll Building, 418 Edison Street, Brush, CO 80723.
2. August 29, 2006, City Hall, Community Room, 245 W. 4th Street, Wray, CO 80758.
3. August 30, 2006, Limon Community Building, North Room, 477 D Avenue, Limon, CO 80828.
4. August 31, 2006, Holiday Inn-Denver International Airport, Breckenridge Ballroom, 15500 East 40th Avenue, Aurora, CO 80239.
5. September 5, 2006, Lorraine High School/Community Center, 301 E. Iowa Avenue, Fountain, CO 80817.
6. September 6, 2006, Pueblo Convention Center, Fortino Grand Hall C–West, 320 Central Main Street, Pueblo, CO 81003.
7. September 11, 2006, Burlington Education and Community Center, 420 S. 14th Street, Old Town, Burlington, CO 80807.
8. September 12, 2006, Community Activity Building (CAB Building), Wallace County Fairgrounds, Sharon Springs, KS 67758.
9. September 13, 2006, Lamar Community Building, Multi-Purpose Room, 610 South 6th Street, Lamar, CO 81052.
10. September 14, 2006, Veteran's Memorial Building, 207 North Main Street, Lakin, KS 67860.

The time for each scoping meeting is 3 to 8 p.m. The meetings will be in an informal, ''open house'' format. No formal presentations are planned for the scoping meetings. The meetings are designed to provide interested parties

the opportunity to receive information on the Project and the NEPA process, ask questions, and provide input and feedback through written and oral comments. All meeting locations are wheelchair accessible. Any individual needing special accommodations should contact Mr. Hartman.

**Participation in the NEPA Process**

Western invites interested Tribes and Federal, state, and local agencies with jurisdiction or special expertise to be cooperating agencies on the EIS. Request to be a cooperating agency by contacting Mr. Hartman. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified under 40 CFR 1501.6(b).

Persons interested in receiving future notices, project information, copies of the EIS, and other information on the NEPA review process should contact Mr. Hartman. The EIS (choice of summary or full document) will be available in printed and electronic (compact disc) formats.

Western anticipates the Draft EIS will be available summer 2007, with a Final EIS available spring 2008. A Record of Decision is expected to be issued spring 2008. The public will be provided opportunities to review progress on the identification of transmission line corridors and routes during public workshops, which will be scheduled after public scoping and prior to preparation of the Draft EIS. The location of additional public meetings and hearings will be provided in the **Federal Register** and/or to local media at a later date.

Dated: July 21, 2006.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. E6–12426 Filed 8–1–06; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–RCRA–2006–0624, FRL–8205–3]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Land Disposal Restrictions No-Migration Variances, EPA ICR Number 1353.08, OMB Control Number 2050–0062

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for an existing approved collection. This ICR is scheduled to expire on December 31, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before October 2, 2006.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–RCRA–2006–0624, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Mail:* RCRA Docket (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* See NOTE below. 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–RCRA–2006–0624. 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*.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Mail Code 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; e-mail address: *vyas.peggy@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2006–0624, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center. See note at end of **ADDRESSES** section. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for RCRA Docket is 202–566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

*Affected entities:* Entities potentially affected by this action are Business or other for profit, Federal Government, and State, Local or Tribal Government.

*Title:* Land Disposal Restrictions No-Migration Variances.

*ICR numbers:* EPA ICR No. 1353.08, OMB Control No. 2050–0062.

*ICR status:* This ICR is currently scheduled to expire on December 31, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate ''no migration.'' The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that ''no migration'' of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 must be met before the hazardous wastes are placed in a land disposal unit.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,168 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 1.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 3,168.

*Estimated total annual costs:* $0, this includes an estimated burden cost of $0 for capital investment and/or maintenance and operational costs.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 26, 2006.

**Matthew Hale,**

*Director, Office of Solid Waste.*

[FR Doc. E6–12453 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0237; FRL–8081–1]**

## Ace Info Solutions Inc and Nortel Government Solutions, and SRA International; Transfer of Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA

International, have been awarded a contract to perform work for OPP, and access to this information will enable Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, to fulfill the obligations of the contract.

**DATES:** Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, will be given access to this information on or before August 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-0786; e-mail address: *croom.felicia@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0237. 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 Office of Pesticide Programs (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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. Contractor Requirements**

Under Contract No. GS-06F-0337Z, Ace Info Solutions Inc and its subcontractors, Nortel Government Solutions, and SRA International, will perform:

1. Maintenance of programming and software;
2. Data dictionary and technical writing;
3. Development, test and production server administration and support;
4. Database query and reporting;
5. System Architecture; and
6. Configuration Management.

The OPP has determined that access by Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, until the requirements in this document have been fully satisfied. Records of information provided to Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, will be maintained by EPA Project Officers for this contract. All information supplied to Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, by EPA for use in connection with this contract will be returned to EPA when Ace Info Solutions Inc and its subcontractor, Nortel Government Solutions, and SRA International, have completed their work.

**List of Subjects**

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 17, 2006.

**Arnold E. Layne,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. E6–12342 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0657; FRL–8083–5]**

## FIFRA Scientific Advisory Panel; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to review the evaluation of the resistance risks from using 100% Bollgard and Bollgard II cotton as part of a pink bollworm eradication program in the state of Arizona.

**DATES:** The meeting will be held on October 24–26, 2006, from 8:30 a.m. to approximately 5 p.m., eastern time.

*Comments*: For the deadlines for the submission of requests to present oral comments and submission of written comments, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

*Nominations*: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before August 23, 2006.

*Special accommodations:* For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at the Holiday Inn Rosslyn Hotel, 1900 North Fort Myer Dr., Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn Hotel is (703) 807–2000.

*Comments:* Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0657, by one of the following methods:

- *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 Bldg., 2777 S. Crystal Dr., 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–2006–0657. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*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 Bldg., 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.

*Nominations, requests to present oral comments, and special accommodations*: See Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

When preparing and submitting comments, remember to use these tips:

1. Identify the document by docket ID number and other identifying information, (subject heading, **Federal Register** date and page number).

2. 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.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

### *C. How May I Participate in this Meeting?*

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2006–0657 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. However, each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, October 17, 2006, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment, e.g., overhead projector, 35 mm projector, chalkboard. Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

2. *Written comments*. Although written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than noon, eastern time, October 10, 2006, to provide the FIFRA SAP the time necessary to consider and review the written comments. It is requested that persons submitting comments directly to the docket also notify the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Persons wishing to submit written comments at the meeting should bring 30 copies. There is no limit on the extent of written

comments for consideration by the FIFRA SAP.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for the meeting announced in this notice should have expertise in one or more of the following areas:

- Familiarity with western cotton production,
- Knowledge of pink bollworm biology,
- Knowledge of insect resistance management for Bt cotton (principles and applications),
- Knowledge of pink bollworm eradication programs in western cotton,
- Knowledge of population dynamics modeling. Sterile Insect Technology (SIT),
- Resistance modeling,
- Knowledge of statics.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 14, 2006. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality, and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website or may be obtained by contacting the OPP Regulatory Public Docket at the address or telephone number listed under **ADDRESSES**.

## II. Background

### *A. Purpose of the FIFRA SAP*

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP from nominations provided by the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

### *B. Public Meeting*

The FIFRA SAP will meet to consider and review the evaluation of the resistance risks from using 100% Bollgard and Bollgard II cotton as part of a pink bollworm eradication program in the state of Arizona. The State of Arizona issued two special local need registrations under FIFRA section 24(c) in March 2006 permitting the use of 100% Bollgard® and Bollgard II® cotton varieties along with sterile pink bollworm moths (i.e., sterile insect technology or SIT), pheromones, and limited use of chemical insecticides in a sanctioned pink bollworm (PBW) eradication program. As a provision of these registrations, the State of Arizona agreed to provide the Agency with data to support the continued use of the FIFRA 24(c) registrations. These data will focus on addressing the uncertainties associated with the

expected effectiveness of the PBW eradication program using sterile insect technology, 100% Bollgard and Bollgard II cotton, pheromones, and limited insecticide use. The Agency is concerned with the potential increased insect resistance that may be posed by the use of 100% Bollgard and Bollgard II cotton (i.e., no structured non-Bt cotton refuge, very high selection intensity) and whether the SIT can be used effectively to manage PBW resistance should it occur during the 4–year eradication program. The State of Arizona, in consultation with USDA and University experts, devised a plan that replaces the biological function served by non-Bt cotton refuges with artificially raised sterile pink bollworm moths. The Panel will be asked to comment on the Agency's review of the effectiveness of this plan using field level systematic monitoring and mapping data in conjunction with modeling simulations.

*C. FIFRA SAP Documents and Meeting Minutes*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available by the end of September 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov website and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained by contacting the OPP Regulatory Public Docket at the address or telephone number listed under **ADDRESSES**.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 27, 2006.

**Clifford Gabriel,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. E6–12435 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0618; FRL–8082–5]**

## Organophosphate Cumulative Risk Assessment; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's cumulative risk assessment for the organophosphate group of pesticides and opens a public comment period on this document and other support documents. As required by the Food Quality Protection Act (FQPA), a cumulative risk assessment, which evaluates exposures based on a common mechanism of toxicity, was conducted to evaluate the risk from food, drinking water, residential, and other non-occupational exposures resulting from registered uses of organophosphate pesticides. The organophosphate group includes over 30 pesticides including acephate, azinphos-methyl (AZM), bensulide, chlorethoxyfos, chlorpyrifos, chlorpyriphos-methyl, diazinon, dichlorvos (DDVP), dicrotophos, dimethoate, disulfoton, ethoprop, fenamiphos, fenthion, fosthiazate, malathion, methamidophos, methidathion, methyl-parathion, mevinphos, naled, omethoate, oxydemeton-methyl, phorate, phosalone, phosmet, phostebupirim, pirimiphos-methyl, profenofos, terbufos, tetrachlorvinphos, tribufos, and trichlorfon. Several organophosphate pesticides, however, were not incorporated into the cumulative risk assessment because no dietary, drinking water, or residential human exposure to these pesticides is anticipated from any of the currently registered uses.

**DATES:** Comments must be received on or before October 2, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0618, 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–2006–0618. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** Kelly Sherman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-8401; fax number: (703) 308-8005; e-mail address: *sherman.kelly@epa.gov*; or Kendra Tyler, Special Review and Reregistration Division (7508P); telephone number: (703) 308-0125; e-mail address: *tyler.kendra@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. Background

### *A. What Action is the Agency Taking?*

EPA is making available the completed cumulative risk assessment for the organophosphate pesticides. The Agency developed this risk assessment as part of its ongoing process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the FQPA.

Section 408(b)(2)(D)(v) of the FFDCA directs the Agency to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. The Agency determined in 1999 that the organophosphate pesticides share a common mechanism of toxicity, cholinesterase inhibition. The organophosphates have been among EPA's highest priority pesticides for review under FQPA.

In developing the organophosphate cumulative risk assessment and underlying methodologies, EPA consulted with the FIFRA Scientific Advisory Panel numerous times, seeking expert review, advice, and recommendations at each major step of the process. The Agency also met with several of its advisory committees to obtain input from a broad spectrum of stakeholders representing the pesticide industry, environmental and public interest groups, growers, academia, and others, including other federal and state regulatory agencies. EPA issued the Preliminary Organophosphate Cumulative Risk Assessment for public comment in December 2001, and presented the cumulative assessment at a Technical Briefing for the public in January 2002. The Agency released the Revised Organophosphate Cumulative Risk Assessment for public comment in June 2002. The Organophosphate Cumulative Risk Assessment (2006 update) is considered an addendum to the June 2002 assessment, and includes improvements and refinements in assessing the cumulative risks of the organophosphate pesticides. The previous versions of the Organophosphate Cumulative Assessment may be accessed on the EPA website at *http://www.epa.gov/pesticides/cumulative*.

EPA has concluded that the cumulative risks associated with the remaining uses of the organophosphate pesticides are below the Agency's level of concern. While completing reregistration eligibility and tolerance reassessment decisions for individual organophosphates, the Agency also evaluated the cumulative risk posed by this group. Although individual risk assessments were conducted for each of the organophosphate pesticides, several were not incorporated into the cumulative risk assessment because no dietary, drinking water, or residential human exposure is anticipated from any of the currently registered uses of these pesticides.

The Interim Reregistration Eligibility Decisions (IREDs) previously issued for a number of organophosphate pesticides are now considered final; the tolerance reassessment and reregistration eligibility process for these pesticides is complete. EPA has determined that the remaining/reassessed tolerances for these pesticides meet the FFDCA safety standard and that no further risk mitigation is necessary as a result of the organophosphate cumulative risk assessment.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's completed cumulative risk assessment for the organophosphates. Such comments and input could address the Agency's risk assessment methodologies and assumptions as applied to this cumulative assessment. The Agency will consider all comments received, and make changes, if appropriate, to the organophosphate cumulative risk assessment.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and

policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to organophosphate pesticides, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. The organophosphate pesticides have had extensive opportunities for public comment as part of their reregistration and tolerance reassessment process.

Comments should be limited to issues raised within the organophosphate cumulative risk assessment and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for the organophosphate cumulative risk assessment. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

*B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2)(A) of FIFRA, as amended, requires the Administrator to make ''a determination as to the eligibility for reregistration (i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a((q)(1)(C))...''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) of (c)(2) of FFDCA. This review is to be completed by August 3, 2006. A tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2), respectively, if ''the Administrator determines the pesticide chemical residue is safe,'' i.e., ''that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' 21 U.S.C. 346a(b)(2)(A), and (c)(2)(A). In making this safety finding, FFDCA requires the Administrator to consider, among other factors, ''available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity...'' 21 U.S.C. 346a(b)(2)(D)(v), and (c)(2)(B).

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 20, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–12343 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0352; FRL–8080–8]**

## Sodium Cyanide; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide sodium cyanide, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed this pesticide sodium cyanide through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

**DATES:** Comments must be received on or before October 2, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0352, 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–2006–0352. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** Wilhelmena Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8025; fax number: (703) 308-8005; e-mail address: *livingston.wilhelmena@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. Background

EPA has reassessed the uses of sodium cyanide, reassessed the one existing tolerance or legal residue limit established for residues of the insecticide hydrogen cyanide as a result of application of sodium cyanide, and on July 13, 2006, reached a tolerance reassessment decision for this pesticide. Sodium cyanide is used as a predacide/rodenticide and as an insecticide. As a predacide/rodenticide, it is used as a single dose poison in the M-44 ejector device to control animals that prey upon livestock and threatened or endangered species or that are vectors of communicable disease. The eligibility of the predacide/rodenticide use was determined in the September 1994 Reregistration Eligibility Decision document (RED) published in the **Federal Register** on January 25, 1995 (60 FR 4910) (FRL–4391–9). As an insecticide, sodium cyanide is used in California to control red scale on fresh market citrus bound for Arizona. It is applied by professional applicators as a post-harvest fumigant. Although a TRED typically does not include an occupational assessment, the decision document addresses potential occupational exposures that were not addressed in the 1994 RED.

The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for sodium cyanide, known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the sodium cyanide TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the sodium cyanide tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like sodium cyanide, which pose no risk concerns, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the sodium cyanide TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Sodium cyanide, however, poses no risks that require mitigation. The Agency therefore is issuing the sodium cyanide TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for

initiating any necessary amendments to the TRED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for sodium cyanide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

*B. What is the Agency's Authority for Taking this Action?*

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 21, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–12346 Filed 7–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0062; FRL–8082–4]**

## Boric Acid/Sodium Borate Salts; Tolerance Reassessment Decision; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the boric acid/sodium borate salts pesticides, and opens a 60 day public comment period on this document. The Agency's risk assessments and other related documents also are available in the boric acid/sodium borate salts pesticides Docket. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

**DATES:** Comments must be received on or before October 2, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0062, 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–2005–0062. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** Nathan Mottl, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0208; fax number: (703) 308-7070; e-mail address: *mottl.nathan@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. Background

### *A. What Action is the Agency Taking?*

EPA has reassessed risks associated with use of the boric acid/sodium borate salts pesticides, reassessed 5 existing tolerances or legal residue limits, and on July 13, 2006, reached a tolerance reassessment and risk management decision. Boric acid and sodium borate salts are used as algaecides, fungicides, herbicides, and insecticides. Boric acid and sodium borate salts are frequently used for control of insects such as ants or roaches by application in non-agricultural food and feed areas. Other uses include use in animal housing, wood structures, forests, sewage systems, transportation and storage facilities, medical/veterinary institutions, uncultivated agricultural/nonagricultural areas, refuse/solid waste sites, swimming pool algae control, ornamental lawns and turf, paved areas and aquatic structures. The Agency is now issuing for comment a Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for boric acid/sodium borate salts, known as a TRED, as well as related technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the boric acid/sodium borate salts tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, boric acid/sodium borate salts was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for boric acid/sodium borate salts.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the boric acid/sodium borate salts TRED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for boric acid/sodium borate salts. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the tolerance reassessment decisions reflected in this TRED will be implemented as presented.

### *B. What is the Agency's Authority for Taking this Action?*

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–12347 Filed 8–1–06; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2002–0202; FRL–8081–2]**

## Lindane Addendum to Reregistration Eligibility Decision; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of an addendum to EPA's Reregistration Eligibility Decision (RED) for the pesticide lindane. The Agency's risk assessments and other related documents also are available in the lindane Docket. Lindane is a broad spectrum insecticide used as a pre-plant seed treatment on six crops. EPA has reviewed lindane through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Nesci, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8059; fax number: (703) 308-8005; e-mail address: *nesci.kimberly@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. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2002–0202. 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 Office of Pesticide Programs (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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

**II. Background**

*A. What Action is the Agency Taking?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed an addendum to the RED for the pesticide lindane under section 4(g)(2)(A) of FIFRA. Products containing lindane are not eligible for reregistration. The Agency has received requests from all lindane technical and end-product registrants to voluntarily cancel all registrations of lindane products. Once the cancellation process is complete, EPA will take steps to revoke the existing tolerances pursuant to section 408(l)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

*B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Lindane, Pesticides, and pests.

Dated: July 27, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–12463 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2004–0202; FRL–8066–6]**

## Pentachloronitrobenzene (PCNB) Reregistration Eligibility Decision; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide PCNB, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the PCNB Docket. PCNB is an organochlorine fungicide used to control plant diseases on vegetables (predominantly green beans and cole crops), field crops (cotton, potatoes, and peanuts), and seeds (seed treatments of barley, beans, corn, cotton, oats, peas, peanut, rice, safflower, sorghum, soybean, sugar beet, and wheat). EPA has reviewed PCNB through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before October 2, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0202, 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–2004–0202. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** Jill Bloom, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8019; fax number: (703) 308-7070; e-mail address: *bloom.jill@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. Background

### *A. What Action is the Agency Taking?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, PCNB under section 4(g)(2)(A) of FIFRA. PCNB is an organochlorine fungicide used to control plant diseases on vegetables (predominantly green beans and cole crops), field crops (cotton, potatoes, and peanuts), and seeds (seed treatments of barley, beans, corn, cotton, oats, peas, peanut, rice, safflower, sorghum, soybean, sugar beet, and wheat). EPA has determined that the data base to support reregistration is substantially complete and that products containing PCNB are eligible or not eligible for reregistration depending on their specific uses. Most uses of PCNB have been found to be ineligible for reregistration. These uses are: turf, residential ornamentals, cole crops (unless registered for control of clubroot only), green beans, cotton, potatoes, dry beans and peas, garlic, peanuts, tomatoes, peppers, and ornamentals in commercial production (except for flowering bulbs). The following uses of PCNB are eligible for reregistration provided the risk mitigation measures noted in the RED are implemented and product labels are amended accordingly: cole crops (registered for control of clubroot only), ornamental bulbs for commercial production, and seed treatments of PCNB. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing PCNB.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the PCNB tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, PCNB was reviewed through the full 6-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for PCNB.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the PCNB RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments

should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for PCNB. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.In particular, during the 60–day comment period following the publication of this Notice, the Agency is soliciting comments on the benefits associated with several minor uses of PCNB. The Agency has based its reregistration eligibility decision for most uses of PCNB on an evaluation of the risk-benefit relationships for those uses. The Agency is soliciting information on benefits for specific minor uses of PCNB in order to confirm that the Agency's reregistration decisions for these uses are supported by an accurate understanding of their risk-benefit relationships, and to determine if amendments should be made to this eligibility decision based on comments which inform these risk-benefit evaluations. The specific kinds of benefits information that the Agency believes will be helpful in this regard and the specific uses for which the Agency is soliciting such information are discussed below.The use sites of PCNB for which the Agency is soliciting information on benefits at this time are: dry beans and peas, peanuts, tomatoes, peppers (all types), and ornamentals in commercial production (all types except for flowering bulbs). The types of information that the Agency believes could be useful in informing the risk-benefit evaluations for these uses include data from comparative efficacy trials for different pesticides used to control diseases on these sites, information about the relative costs of using PCNB and potential alternatives, production cost data, information on why registered alternatives are not appropriate for specific diseases in a particular State or under particular climatic conditions, and documentation of the lack of alternatives for controlling a particular disease.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the PCNB RED will be implemented as it is now presented.

*B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other appropriate regulatory action.

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 26, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–12485 Filed 8–1–06; 8:45 am]

**BILLING CODE 656050-S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0589; FRL– 8079–6]**

## Cancellation of Pesticides for Non-payment of Year 2006 Registration Maintenance Fees

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

**ACTION:** Notice.

**SUMMARY:** Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee that was due January 15, 2006 has gone unpaid for 720 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 720 of these registrations have been issued within the past few days.

**FOR FURTHER INFORMATION CONTACT:** For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*

**SUPPLEMENTARY INFORMATION:**

**I. Important Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0589. 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 Office of Pesticide Programs (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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. Introduction**

Section4(i)(5) of FIFRA as amended in October 1988 (Public Law 100–532), December, 1991 (Public Law 102–237), and again in August 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when he

determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 177 minor agricultural use registrations at the request of the registrants.

In fiscal year 2006, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Act (PRIA) was passed by Congress in January 2004. PRIA became effective in March 2004 and authorized the Agency to collect $27 million in maintenance fees in fiscal year 2006. In late December 2005, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,590 section 3 registrations, or about 96 percent of the registrations on file in December. Fees have been paid for about 2,181 section 24(c) registrations, or about 84 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 451 section 3 registrations and about 269 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2007, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled and released for shipment prior to the effective date of the action. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed through special reviews or other Agency actions.

### III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the section 24(c) registrations, and Table 2 lists all of the section 3 registrations which were canceled for non-payment of the 2006 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

| SLN no. | Product Name |
|---|---|
| 000264 AL–89–0008 | Monitor 4 Spray |
| 000279 AL–94–0007 | Pounce 3.2 EC Insecticide |
| 000279 AR–03–0001 | Pounce 3.2 EC Insecticide |
| 010163 AR–05–0007 | Moncut 4SC |
| 000264 AR–89–0005 | Monitor 4 Spray |
| 000279 AR–89–0012 | Pounce 3.2 EC Insecticide |
| 062719 AR–93–0006 | Diathane DF Agricultural Fungicide |
| 000279 AR–94–0004 | Pounce 3.2 EC Insecticide |
| 001812 AR–96–0003 | Cotton-Pro Flowable Herbicide |
| 062719 AZ–02–0005 | Goal 2XL Herbicide |
| 079709 AZ–03–0005 | Kerb 50W Herbicide In WSP |
| 036029 AZ–05–0002 | Ground Squirrel Bait By Wilco |
| 004581 AZ–79–0010 | Hydrothol 191 |
| 062719 AZ–79–0036 | Kerb 50-W Selective Herbicide |
| 000264 AZ–88–0028 | Sencor DF 75% Dry Flowable Herbicide |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 062719 AZ–96–0011 | Goal (r) 2XL Herbicide |
| 062719 AZ–96–0012 | Goal (r) 2XL Herbicide |
| 000100 AZ–99–0008 | Endurance Herbicide |
| 000352 CA–00–0007 | Dupont Oust Herbicide |
| 071711 CA–04–0017 | Applaud 70WP Insect Growth Regulator |
| 000264 CA–05–0003 | Admire 2 Flowable Insecticide |
| 000241 CA–05–0019 | Raptor Herbicide |
| 000264 CA–76–0019 | Di-Syston 15% Granular Systemic Insecticide |
| 060204 CA–76–0045 | Dow Formula 40 |
| 000264 CA–77–0036 | Di-Syston Liquid Concentrate Systemic Insecticide |
| 059623 CA–77–0078 | Geigy Diazinon 50W (50% Wettable Powder) Insecticide |
| 000264 CA–78–0189 | Monitor 4 Spray |
| 000264 CA–79–0096 | Monitor 4 Spray |
| 000279 CA–82–0081 | Pounce 3-2EC |
| 062719 CA–83–0065 | Goal 1.6E Herbicide |
| 000279 CA–84–0214 | Ammo 2.5 EC Insecticide |
| 000279 CA–85–0044 | Ammo 2.5 EC Insecticide |
| 000279 CA–86–0041 | Pounce 3.2 EC Insecticide |
| 062719 CA–88–0034 | Goal 1.6E Herbicide |
| 059623 CA–89–0021 | Rodent Bait Block - Diphacinone Treated Grain/ paraffin |
| 059623 CA–89–0026 | Rodent Bait Zinc Phosphide Treated Grain (1%) |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 063201 CA–89–0030 | Ronilan Fungicide 50W |
| 000100 CA–91–0022 | Gramoxone Extra Herbicide |
| 060204 CA–91–0032 | Capture 2EC-Cal |
| 000100 CA–92–0006 | Gramoxone Extra Herbicide |
| 062719 CA–92–0018 | Goal 1.6E Herbicide |
| 062719 CA–92–0029 | Goal 1.6E Herbicide |
| 010707 CA–93–0006 | Magnacide H Herbicide |
| 062719 CA–93–0014 | Goal 1.6E Herbicide |
| 000100 CA–94–0029 | Diquat Herbicide |
| 063232 CA–95–0005 | Metasystox-R Spray Concentrate |
| 062719 CA–97–0010 | Success |
| 008133 CA–97–0034 | Formaldehyde Solution 37 |
| 068891 CA–98–0007 | Enzone |
| 000264 CO–02–0003 | Balance Herbicide |
| 000352 CO–05–0002 | Dupont Authority Herbicide |
| 062719 CT–01–0001 | Goal 2XL Herbicide |
| 000241 CT–04–0001 | Acrobat MZ Fungicide |
| 062719 CT–98–0001 | Telone EC |
| 000264 DE–92–0002 | Monitor 4 Spray |
| 071711 FL–03–0013 | Courier Insect Growth Regulator |
| 063935 FL–04–0001 | Dupont Escort Herbicide |
| 000264 FL–04–0013 | Aliette WDG Fungicide |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 000264 FL–89–0007 | Monitor 4 Spray |
| 000264 FL–89–0041 | Monitor 4 Spray |
| 000264 FL–92–0004 | Monitor 4 Spray |
| 062719 FL–96–0008 | Dithane DF Agricultural Fungicide |
| 068891 FL–96–0011 | Enquik |
| 062719 FL–98–0002 | Tracer |
| 000279 FL–99–0001 | Pounce 3.2 EC Insecticide |
| 001812 FL–99–0002 | Direx 80DF |
| 001812 GA–01–0001 | Fluridone SC |
| 000279 GA–05–0004 | Quicksilver T & O |
| 000264 GA–86–0004 | Monitor 4 Spray |
| 000279 GA–93–0008 | Pounce 3.2 EC Insecticide |
| 001812 GU–04–0001 | Kocide 4.5 LF |
| 001812 HI–00–0002 | Direx 4L |
| 062719 HI–00–0003 | Gf - 120 Fruit Fly Bait |
| 062719 HI–02–0006 | Goal 2XL Herbicide |
| 047893 HI–03–0005 | Livingston's Nature-Ripe TM |
| 062719 HI–96–0010 | Goal (r) 2XL Herbicide |
| 062719 HI–99–0002 | Goal 2XL Herbicide |
| 062719 IA–99–0001 | Transline |
| 000352 ID–00–0019 | Dupont Oust Herbicide |
| 010163 ID–01–0003 | Moncut 50WP |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 001812 ID–02–0015 | Equus DF |
| 071711 ID–03–0005 | Moncut SC |
| 079639 ID–03–0010 | Roundup Herbicide |
| 061282 ID–05–0010 | Prozap Zinc Phosphide Pellets |
| 002393 ID–86–0018 | Ramik Brown |
| 000264 ID–87–0004 | Sencor 4 Flowable Herbicide |
| 000264 ID–87–0005 | Sencor DF 75% Dry Flowable Herbicide |
| 000264 ID–93–0010 | Scout X-TRA Insecticide. |
| 034704 ID–94–0010 | Vine-Der |
| 007173 ID–96–0012 | Rozol Pellets |
| 001812 ID–97–0004 | Linex 50 DF |
| 010163 IL–04–0003 | Imidan 70-W |
| 000279 IN–05–0001 | Quicksilver T & O |
| 000264 IN–93–0003 | Monitor 4 Spray |
| 000264 KS–01–0001 | Balance 4SC Herbicide |
| 000264 KS–01–0002 | Stratego Fungicide |
| 000264 KS–99–0003 | Balance Herbicide |
| 000264 KS–99–0004 | Epic |
| 062719 KY–00–0002 | Tracer |
| 062719 KY–03–0001 | Tracer |
| 062719 KY–94–0002 | Dithane Df Agricultural Fungicide |
| 001812 LA–00–0013 | Griffin Linuron 4L Flowable Weed Killer |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 001812 LA–00–0015 | Linex 50 DF |
| 010163 LA–04–0005 | Moncut 4SC |
| 058779 LA–05–0011 | Vaprox Hydrogen Peroxide Sterilant |
| 000264 LA–91–0008 | Monitor 4 |
| 000279 LA–97–0002 | Pounce 3.2 EC Insecticide |
| 010163 LA–97–0004 | Imidan 70-WP Agricultural Insecticide |
| 062719 LA–99–0009 | Confirm 2F Agricultural Insecticide |
| 000264 LA–99–0011 | Monitor 4 Spray |
| 001812 LA–99–0015 | Cotton-Pro Flowable Herbicide |
| 007173 MD–78–0007 | Rozol Paraffinized Pellets |
| 000524 ME–03–0005 | Accord Concentrate Herbicide |
| 000352 ME–05–0502 | Dupont Assure II Herbicide |
| 034704 ME–93–0004 | Clean Crop Dimethoate 400 |
| 007969 MI–05–0006 | Facet 75 DF Herbicide |
| 007173 MI–77–0014 | Rozol Paraffinized Pellets |
| 034704 MI–87–0003 | Captan 50 Wettable Fungicide |
| 062719 MN–02–0006 | Goal 2XL Herbicide |
| 007870 MN–04–0003 | Azone 15 |
| 000100 MN–05–0005 | Callisto |
| 062719 MN–94–0005 | Transline Herbicide |
| 000352 MN–95–0006 | Dupont Oust Herbicide |
| 062719 MN–97–0002 | Transline |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 068573 MP–05–0001 | Fosphite Fungicide |
| 001812 MP–05–0002 | Kocide 4.5 LF |
| 001812 MS–00–0003 | Griffin Linuron 4L Flowable Weed Killer |
| 000279 MS–00–0006 | Pounce 3.2 EC Insecticide |
| 001812 MS–00–0011 | Linex 50 DF |
| 000352 MS–01–0025 | Dupont Glyphosate Herbicide |
| 005481 MS–01–0032 | Aztec 4.67% Granular |
| 001812 MS–01–0034 | Direx 4L |
| 001812 MS–01–0035 | Direx 80DF |
| 066222 MS–02–0018 | Galigan 2E |
| 058779 MS–05–0022 | Vaprox Hydrogen Peroxide Sterilant |
| 000264 MS–83–0013 | Monitor 4 Spray |
| 034704 MS–90–0012 | Clean Crop Amine 4 2,4-D Weed Killer |
| 034704 MS–91–0007 | Savage 2,4-D Broadleaf Herbicide |
| 001812 MS–96–0006 | Cotton-Pro Flowable Herbicide |
| 072113 MS–99–0005 | Permethrin 3.2 TC |
| 001812 MT–02–0001 | Equus DF |
| 062719 MT–02–0002 | Goal 2XL Herbicide |
| 062719 MT–98–0006 | Stinger |
| 000279 NC–01–0005 | Pounce 3.2 EC Insecticide |
| 000279 NC–05–0002 | Quicksilver T & O Herbicide |
| 007173 NC–77–0020 | Rozol Paraffinized Pellets |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 007969 NC–81–0023 | Basagran |
| 000279 NC–92–0013 | Pounce 3.2 EC Insecticide |
| 062719 NC–94–0001 | Dithane DF Agricultural Fungicide |
| 062719 ND–00–0001 | Sonalan 10G |
| 062719 ND–00–0002 | Sonalan HFP |
| 062719 ND–00–0004 | Stinger |
| 062719 ND–01–0008 | NAF-545 |
| 001812 ND–02–0004 | Equus DF |
| 062719 ND–03–0005 | Vista |
| 062719 ND–03–0006 | Vista |
| 062719 ND–05–0004 | Glyphomax XRT |
| 000352 ND–05–0006 | Dupontauthority Herbicide |
| 000100 ND–05–0007 | Callisto |
| 062719 ND–94–0001 | Transline Herbicide |
| 000352 ND–97–0002 | Velpar DF Herbicide |
| 000352 NE–05–0001 | Dupont Authority Herbicide |
| 000100 NE–05–0002 | Callisto |
| 059639 NJ–96–0005 | Orthene 75 Wsp (insecticide In A Water Soluble Bag) |
| 062719 NM–04–0001 | Lock-On |
| 062719 NM–04–0002 | Lock-On |
| 062719 NM–95–0001 | Lorsban 50W Insecticide In Water Soluble Packets |
| 008133 NV–03–0004 | Formaldehyde Solution 37 |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 000352 NV–99–0009 | Dupont Oust Herbicide |
| 062719 NY–00–0001 | Confirm 2F Agricultural Insecticide |
| 001812 NY–00–0002 | Fluridone SC |
| 062719 NY–02–0002 | Lorsban-4E |
| 062719 NY–02–0003 | Lorsban 15G |
| 062719 NY–04–0002 | Quintec |
| 062719 NY–04–0004 | Stinger |
| 007173 NY–94–0007 | Rozol Pellets |
| 000264 OH–79–0010 | Monitor 4 Spray |
| 000279 OK–83–0018 | Pounce 3.2 EC |
| 007501 OK–93–0001 | Tops 90 |
| 000524 OK–93–0006 | Lasso II Granular Herbicide By Monsanto |
| 000279 OR–00–0004 | Aim Herbicide |
| 000264 OR–02–0006 | Ethrel Brand Ethephon Plant Regulator |
| 000264 OR–02–0011 | Rovra (r) Brand 4 Flowable Fungicide |
| 000264 OR–02–0012 | Rovral (r) Fungicide |
| 000100 OR–04–0012 | Tilt Gel Fungicide |
| 000264 OR–05–0003 | Rovral Fungicide |
| 061282 OR–05–0021 | Prozap Zinc Phosphide Pellets |
| 012455 OR–05–0022 | ZP Rodent Bait Ag |
| 004271 OR–05–0023 | Zinc Phosphide on Oats |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 000264 OR–80–0063 | Nemacur 3 Emulsifiable Nematicide |
| 000264 OR–81–0039 | Sencor 4 Flowable Herbicide |
| 000264 OR–81–0040 | Sencor 75 Wettable Granular Herbicide |
| 000264 OR–84–0032 | Di-Syston 8 |
| 007173 OR–84–0048 | Rozol Paraffinized Pellets |
| 000264 OR–85–0019 | Sencor 4 Flowable Herbicide |
| 062719 OR–88–0012 | Kelthane MF Agricultural Miticide |
| 000264 OR–91–0027 | Di-Syston 8 |
| 000264 OR–93–0012 | Bayleton 50% Wettable Powder |
| 010707 OR–95–0002 | Magnacide H Herbicide |
| 000352 OR–95–0005 | Dupont Oust Herbicide |
| 002393 OR–95–0021 | Hopkins Zinc Phosphide Pellets |
| 062719 OR–95–0023 | Transline |
| 000264 OR–99–0001 | Admire 2 Flowable |
| 068891 OR–99–0030 | Propel Plant Growth Regulator |
| 068891 OR–99–0031 | Propel Plant Growth Regulator |
| 000264 OR–99–0049 | Guthion Solupak 50% Wettable Powder Insecticide |
| 007173 PA–80–0045 | Rozol Paraffinized Pellets |
| 001812 PR–01–0002 | Eguus 720 Flowable Fungicide (chlorothalonil) |
| 000100 RI–05–0004 | Caparol 4L Herbicide |
| 000279 SC–05–0002 | Quicksilver T & O |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 007173 SC–78–0002 | Rozol Paraffinized Pellets |
| 000264 SC–78–0016 | Monitor 4 Spray |
| 000264 SC–81–0018 | Sencor 75 DF Herbicide |
| 000279 SC–92–0002 | Pounce 3.2 EC Insecticide |
| 000352 SC–95–0001 | Dupont Oust Herbicide |
| 000264 SD–00–0002 | Axiom DF Herbicide |
| 000264 SD–00–0005 | Flufenacet DF Herbicide |
| 000100 SD–05–0005 | Callisto |
| 062719 SD–96–0007 | Goal (r) 2XL Herbicide |
| 000352 SD–97–0001 | Velpar DF Herbicide |
| 000264 SD–99–0002 | Epic DF Herbicide |
| 001812 TN–00–0006 | Linex 50 DF |
| 000279 TN–03–0003 | Pounce 3.2 EC Insecticide |
| 000264 TN–04–0006 | Monitor 4 Spray |
| 000264 TN–88–0004 | Monitor 4 Spray |
| 000279 TN–91–0003 | Pounce 3.2 EC Insecticide |
| 062719 TN–94–0001 | Lorsban 4E-HF |
| 001812 TX–00–0011 | Direx 80DF |
| 000264 TX–90–0004 | Di-Syston 8 |
| 000264 TX–91–0012 | Monitor 4 Spray |
| 000279 TX–97–0012 | Pounce 3.2 EC Insecticide |
| 007173 VA–77–0015 | Rozol Paraffinized Pellets |
| 000279 VA–91–0002 | Pounce 3.2 EC Insecticide |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 000264 VA–93–0002 | Monitor 4 Spray |
| 062719 VA–98–0001 | Tracer |
| 000264 VT–05–0007 | Sencor DF 75% Dry Flowable Herbicide |
| 000352 WA–00–0008 | Dupont Oust Herbicide |
| 062719 WA–00–0011 | Nu-Flow M Seed Treatment Fungicide |
| 010163 WA–00–0022 | Prokil Dimethoate E267 |
| 062719 WA–00–0029 | Dithane DF Agricultural Fungicide |
| 001812 WA–00–0036 | Linex 50 DF |
| 000264 WA–01–0031 | Stratego Fungicide |
| 000264 WA–01–0039 | Axiom DF Herbicide |
| 000264 WA–02–0011 | Axiom DF Herbicide |
| 062719 WA–02–0025 | DMA 4 Herbicide |
| 000279 WA–03–0009 | Aim Herbicide |
| 007173 WA–78–0061 | Rozol Paraffinized Pellets |
| 000264 WA–84–0036 | Di-Syston 8 |
| 000352 WA–93–0002 | Dupont Krovar I Df Herbicide |
| 000264 WA–93–0003 | Sencor DF 75% Dry Flowable Herbicide |
| 000264 WA–94–0041 | Sencor DF 75% Dry Flowable Herbicide |
| 000352 WA–95–0021 | Dupont Oust Herbicide |
| 002393 WA–95–0022 | Hopkins Zinc Phosphide Pellets |
| 005481 WA–96–0010 | Vapam HL |

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| SLN no. | Product Name |
|---|---|
| 062719 WA–96–0034 | Goal (r) 2XL Herbicide |
| 000264 WA–97–0003 | Sencor DF 75% Dry Flowable Herbicide |
| 062719 WA–97–0023 | Goal (r) 2XL Herbicide |
| 000264 WA–98–0004 | Di-Syston 15% Granular Systemic Insecticide |
| 000524 WI–04–0002 | Roundup Weathermax Herbicide |
| 034704 WI–05–0004 | Diazinon G-14 |
| 000352 WI–96–0001 | Dupont Oust Herbicide |
| 062719 WI–96–0009 | Goal (r) 2XL Herbicide |
| 062719 WI–97–0004 | Transline |
| 010163 WY–00–0003 | Supracide 2E Insecticide-Miticide |
| 062719 WY–02–0004 | Goal 2XL Herbicide |
| 000352 WY–92–0001 | Dupont Velpar L Herbicide |
| 062719 WY–97–0001 | Sonalan HFP |
| 062719 WY–98–0001 | Goal (r) 2XL Herbicide |
| 007969 WY–98–0002 | Basagran Herbicide |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

| Registration no. | Product Name |
|---|---|
| 000100–00841 | Elcar Biological Insecticide |
| 000100–01151 | Quadris/Ridomil Gold Twin-Pak |
| 000148–01148 | Freestyle Algaetrol-76 |
| 000228–00185 | Riverdale Tri-Ester |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 000228–00203 | Riverdale Weed and Feed with Mcpa & Mecoprop |
| 000228–00205 | Riverdale Tri-Ester Tm II |
| 000241–00268 | Prowl DG Herbicide |
| 000241–00291 | Prowl Herbicide Flaked |
| 000241–00338 | Pentagon 60 DG Herbicide |
| 000264–00643 | Whip Technical |
| 000264–00648 | Whip 0.75 EC Herbicide |
| 000264–00933 | Gustafson Tops 2.5d |
| 000264–00954 | Tops 5 Potato Seed-Piece Treatment |
| 000303–00092 | Quanto Germicidal Detergent |
| 000346–00041 | Russell/Dual Chain |
| 000498–00139 | Spraypak Flying & Crawling Insect Killer 2 |
| 000498–00166 | Spraypak Indoor Insect Fogger, Formula 7 |
| 000506–00179 | Tat Roach & Ant Killer with Residual Action IV |
| 000506–00182 | Tat Crawling Insect Killer |
| 000506–00183 | Tat Te Wasp & Hornet Spray |
| 000507–00006 | Premeasured Timsen Bar Sanitizer |
| 000507–00010 | Unit Duo-Bact Disinfectant & Deodorant Beads |
| 000524–00296 | Lasso II Herbicide |
| 000524–00403 | Partner WDG Herbicide |
| 000524–00432 | Expedite Grass & Weed Herbicide |
| 000524–00433 | Militia Herbicide |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 000524–00436 | Roundup Dry Pak Herbicide Water Soluble Granule |
| 000524–00449 | Expedite Grass & Weed Plus Herbicide |
| 000524–00450 | Expedite Grass and Weed II Herbicide |
| 000524–00477 | Roundup E Z Dry Herbicide |
| 000524–00508 | Mon 77859 Hebicide |
| 000524–00514 | Mon 78063 |
| 000524–00518 | Roundup Problend Herbicide |
| 000524–00521 | Mon 78128 Herbicide |
| 000524–00540 | Mon 78404 Herbicide |
| 000527–00126 | Nix |
| 000773–00087 | Aurimite |
| 000806–00016 | Avon Sss Skin-So-Soft Bug Guard Plus IR3535 Insect Repellent |
| 000891–00174 | Yarmor 302 Pine Oil |
| 000891–00175 | Herco Pine Oil |
| 000891–00176 | Yarmor 302W Pine Oil |
| 000891–00181 | Hercules Yarmor 60 Pine Oil |
| 001001–00014 | Methar 30 Disodium Methanearsonate Liquid Crabgrass Killer |
| 001021–00501 | Pyrocide Intermediate No. 5561 |
| 001021–00537 | Pyrocide Intermediate 5582 |
| 001021–00579 | Pyrocide Intermediate 5858 |
| 001021–00633 | Pyrocide Intermediate No.6057 |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 001021–00663 | Pyrocide Intermediate No. 6151 |
| 001021–00787 | Pyrocide Intermediate No. 6496 |
| 001021–00788 | Pyrocide (r) Intermediate No. 6494 |
| 001021–00924 | Synergized Pyrethrin Spray for Mills, Food Plants & Home |
| 001021–01018 | Pyrocide Intermediate 6914 |
| 001021–01102 | D-Trans Intermediate 1837 |
| 001021–01263 | Pyrocide Fogging Concentrate 7167 |
| 001021–01301 | Pyrocide Fogging Concentrate 7206 |
| 001021–01302 | Pyrocide Fogging Formula 7207 |
| 001021–01391 | Multicide Concentrate 2120 |
| 001021–01392 | Multicide (r) Intermediate 2121 |
| 001021–01395 | Multicide (r) Mix 2167 |
| 001021–01400 | Multicide Concentrate 2154 |
| 001021–01402 | Multicide Fogging Formula 2170 |
| 001021–01403 | Multicide Intermediate 2079 |
| 001021–01406 | Multicide Concentrate 2189 |
| 001021–01410 | Multicide Fogger and Contact Spray 2198 |
| 001021–01468 | Multicide Intermediate 2277 |
| 001021–01479 | Multicide Intermediate 2292 |
| 001021–01508 | Multicide Intermediate 2322 |
| 001021–01565 | Evercide Residual Insecticide Concentrate 2457 |
| 001021–01574 | Multicide Fogging Concentrate 2469 |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 001021–01609 | Multicide Fogging Concentrate 2468 |
| 001021–01738 | Evercide Synergized Permethrin Pour-On 2781 |
| 001021–01744 | Evercide Permethrin Pour-On 2780 |
| 001043–00083 | Coverage Spray Disinfectant Cleaner |
| 001072–00016 | Surge Liquatone Sanitizer for Dairy Sanitation |
| 001270–00171 | Zep Amine A |
| 001270–00183 | Zep Spirit Germicidal Cleaner and Disinfectant |
| 001270–00229 | Zep Fs Amine B |
| 001270–00246 | Zep Attack A |
| 001270–00248 | Zep Tox Wasp and Hornet Spray |
| 001317–00068 | IODU |
| 001317–00083 | Fly Foil Spray |
| 001386–00587 | Unico Mcpa 4 Amine Weed Killer |
| 001448–00028 | Busan 72a |
| 001448–00082 | Busan 71 |
| 001448–00099 | Busan 1070 |
| 001448–00151 | T-10-1 |
| 001448–00244 | T-10-2 |
| 001448–00368 | Busan 1253 for Soapwrap Application |
| 001448–00383 | Busan 1146 |
| 001448–00393 | Busan 1127 RTU |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 001448–00402 | TCMTB-60E |
| 001448–00404 | TCMTB-WE60 |
| 001448–00406 | TCMTB-XE |
| 001475–00145 | Naphthalene |
| 001677–00066 | Kancel |
| 001677–00169 | Monarch 400 Sanitizer |
| 002230–00053 | DDDS Lemon |
| 002230–00054 | DDDS Wintergreen |
| 002230–00057 | DDDS Pine Scent |
| 002382–00129 | Ultra-Sect ''r'' IGR Flea & Tick Mist |
| 002623–00004 | Everpure Bacteriostatic Water Filter (model QC4-DC) |
| 002623–00005 | Everpure Bacteriostatic Replacement Filter Cartridge |
| 002749–00059 | Diuron 80 WP Weed Killer |
| 002935–00083 | Wilbur-Ellis Malathion 8 Spray |
| 002935–00520 | Digon 400 |
| 002935–00529 | Botran 6% Dust |
| 002935–00540 | Potato Seed Treater Fungicide |
| 003090–00168 | Sanitized Brand Hygienic Spray S-1 for Industrial Use |
| 003090–00178 | Sanitized Brand XTX Bacteriostatic Chemical |
| 003090–00196 | Sanitized Brand OA-P |
| 003090–00216 | Sanitized Brand MBP 96 61 |
| 003546–00036 | Shoo-Fly Multipurpose Insect Spray |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 003546–00039 | Sport Mosquito & Tick Stop |
| 003837–00024 | Broma Weed Killer |
| 003838–00036 | Quat 44 |
| 003838–00037 | Quat Rinse |
| 003838–00042 | Quat 256 |
| 003838–00046 | Acid Free Restroom Cleaner |
| 003838–00050 | Nutral Q |
| 003838–00051 | Quat 20 |
| 003862–00109 | Swat Flying Insect Killer |
| 003862–00122 | Multi-Purpose Aqueous Insecticide Spray |
| 003862–00162 | B.B.C. |
| 003862–00168 | 4.5 Disinfectant/Detergent |
| 003862–00169 | Gittem Gottem 0.25% Liquid Insecticide Spray |
| 004000–00048 | Lemon Bathroom Cleaner & Disinfectant |
| 004001–00003 | Triclosan |
| 004170–00008 | Betco Pine Odor |
| 004170–00014 | Betco 256 |
| 004170–00036 | Forest 5 |
| 004170–00068 | Sure Bet |
| 004170–00080 | Wasp & Hornet Killer |
| 004170–00081 | Flying Insect Killer |
| 004482–00012 | End-Germ |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 004482–00015 | Dical |
| 004581–00201 | Aquathol Granular Aquatic Herbicide |
| 004713–00001 | Pyrethrum Extract |
| 004787–00037 | Cyren MUC |
| 004787–00039 | Cyren 150 Concentrate |
| 004787–00045 | Atrapa ULV |
| 004787–00047 | Griffin Methyl Parathion MUP |
| 004808–00005 | Additive MC |
| 004823–00004 | Sentinel |
| 005174–00022 | Sani Kleen II |
| 005383–00092 | Troysan Polyphase 582 |
| 005383–00095 | Troysan Polyphase 598 |
| 005383–00096 | Troysan Polyphase 587 |
| 005481–00058 | Sevin Brand Carbaryl Insecticide 5% Dust |
| 005481–00065 | Alco Sevin-Sevin Brand Carbaryl Insecticide 50W |
| 005481–00089 | Durham Carbaryl Granules 10 |
| 005481–00090 | Durham Carbaryl Insecticide 5% Granules |
| 005481–00095 | Durham End of Trail Snail-Slug & Insect Granules |
| 005481–00097 | Alco Snail, Slug and Sowbug Killer |
| 005481–00098 | Durham Carbaryl Dust 5 |
| 005481–00100 | Durham Carbaryl Metaldehyde Granules 5-2.5 |
| 005481–00102 | Durham Duragon 2.67 Systemic Insecticide |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 005481–00108 | Durham Carbaryl Dust 10 |
| 005481–00190 | Sevin Brand Carbaryl Insecticide Dust Concentrate 46 |
| 005481–00242 | Kon-Trold Roost Paint and Cage Spray |
| 005481–00253 | 5% Sevin Dust |
| 005481–00271 | Royal Brand Sevin 50% Wettable |
| 005481–00275 | Two Way Vegetable Dust |
| 005481–00282 | Royal Brand Sevin 2% Garden Dust |
| 005481–00283 | Carbaryl Maneb Tomato and Potato Dust |
| 005481–00294 | 10% Sevin Dust |
| 005481–00312 | 7.5% Sevin Dust |
| 005481–00321 | Copper Dust with 2% Carbaryl |
| 005481–00323 | Royal Brand Tomato Dust |
| 005481–00451 | Snail, Slug & Sowbug Killer for Lawn & Garden |
| 005991–00007 | Time-Saver Detergent-Sanitizer Iodophor Type |
| 005991–20002 | Time-Saver Liquid Bactericide |
| 006885–00005 | Maintex DDC |
| 006959–00077 | Cessco 5 Aerosol Insecticide |
| 006959–00078 | Cessco 7 Aerosol Insecticide |
| 006973–00029 | Soilserv Bacillus Pellets |
| 007001–00377 | Turf Fertilizer with .107% Dimension |
| 007001–00378 | Turf Fertilizer with .172% Dimension |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 007001–00379 | Turf Fertilizer with 0.086% Dimension |
| 007001–00380 | Lange Turf Formula Dimension 143 Preemergence Weed Control |
| 007001–00381 | Lange Turf Formula Dimension 125 Preemergence Weed Control |
| 007001–00382 | PCNB 12.5% |
| 007048–00002 | Bio Magic Rinse Powder |
| 007401–00318 | Ferti-Lome Premergent Weed and Grass Control |
| 007616–00077 | KT Granular Algicide |
| 008033–00027 | Adjust Brand 70WP Insecticide |
| 008133–00017 | Bactron K-22 |
| 008133–00025 | Bactron K-50 |
| 008133–00029 | Bactron K-78 Microbiocide |
| 008133–00031 | Bactron K-89 Microbiocide |
| 008155–00011 | High Dilution Quaternary Husky 801 H/D/Q Germicidal Cleaner |
| 008503–00015 | Pine Scent II |
| 008637–00007 | Mitco CC-12I Algicide |
| 008764–00012 | Freshgard 500 |
| 008764–00040 | Sta-Fresh 451 |
| 008791–00050 | E-Z Clor Hypochlor Chlorinating Tablets |
| 009603–00001 | Stakill Diuron and Bromacil Weed Killer |
| 009616–00009 | Vertex Css-10 |
| 009779–00206 | Dimate 2.67 |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 009804–00010 | Perlox |
| 009829–00008 | MPG |
| 009868–00002 | Anker Marine Paints Antifouling, Cold Plastic |
| 009886–00013 | Uniclean 60/85 |
| 009886–00014 | Uniclean 80/85 |
| 009886–00019 | Uniclean 25/85 |
| 010039–20202 | Neva-Mor Roach-Dead Powder |
| 010088–00020 | Spray-Fog |
| 010088–00062 | Cockroach Killer |
| 010088–00084 | Residual Insecticide |
| 010380–00001 | Bleach By Beacon |
| 010404–00070 | Eliminate 47% Dg Selective Broadleaf Herbicide. |
| 010465–00038 | Supatimber Clear Type B |
| 010663–00021 | Super Al-Jax |
| 010671–00004 | Hy-Test Sodium Hypochlorite |
| 010707–00015 | Shell Aqualin Herbicide |
| 010707–00016 | Magnacide S Slimicide |
| 010707–00017 | Shell Aqualin Biocide |
| 010932–00010 | 7410 Microbiocide |
| 010932–00013 | Antimicrobial 7413 |
| 011350–00033 | Sigmaplane Ecol HS Antifouling Redbrown 5297 HS-Rd |
| 011350–00034 | Sigmaplane Ecol HA Antofouling Redbrown 5294 |
| 011474–00040 | Sungro Reside Du |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 011474–00093 | Sungro Reside Du-B |
| 011623–00047 | Barrier II |
| 011715–00006 | Speer Insect Killer (with .35% Sbp-1382) |
| 011715–00023 | Speer Equine Spray |
| 011715–00047 | Speer Aircraft Insecticide Aerosol |
| 011715–00091 | Magic Guard Automatic Sequential Insecticide |
| 011715–00119 | Better World Dairy Spray |
| 011715–00148 | Magic Guard Automatic Room Fogger Formula II |
| 011715–00158 | Magic Guard with Rotenone/pyrethrins |
| 011715–00159 | Speer E-Z Way Residual Crack & Crevice Injection System |
| 011715–00165 | Better World Residual Roach and Flea Spray |
| 011715–00169 | Better World Insecticide |
| 011715–00173 | Speer Stable Spray |
| 011715–00177 | Magic Guard Non-Flammable Wasp Spray |
| 011715–00180 | Speer E-Z II Residual Spray |
| 011715–00230 | Farnam Super-Sheen Wipe-Plus |
| 011715–00234 | Farnam Wipe II Fly Protectant |
| 011715–00235 | Faram Wipe-P Fly Protectant |
| 011736–20001 | Sparkle |
| 012014–00062 | Swim Pro 1000 Algaecide |
| 012480–00001 | A 24-4 Algae Treatment |
| 029909–00019 | Cardinal General Purpose Insecticide Spray |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 032802–00029 | Trichlorfon 6.2G Turf Granules |
| 032977–00002 | Sterisol Germicide Concentrate |
| 033025–00001 | Citromax Citronella Insect Repellent |
| 033161–00012 | F-300R Fogging Compound |
| 033354–00002 | Fresh Foam 26F |
| 033354–00018 | Oxyfresh |
| 034052–00002 | Bear-Cat Concentrate |
| 034052–00015 | Bear-Cat Disinfectant |
| 034282–00013 | Pine Odor Disinfectant |
| 034282–00014 | Lemon Odor Disinfectant |
| 034282–00015 | Mint Odor Disinfectant |
| 034704–00694 | Clean Crop Acephate 80 DF Seed Protectant |
| 034797–00081 | Qualis 0.5% Permethrin Spray |
| 034810–00028 | Ultra |
| 035054–00002 | Term-Out |
| 035085–00002 | HBH Sodium Hypochlorite Solution |
| 035138–00088 | Blast Away Bug Killer |
| 035138–00089 | Aerochem General Purpose Granules |
| 035307–00003 | Growers 455 Soluble Oil |
| 035307–00004 | Growers 435 Soulble Oil |
| 035512–00029 | Turf Pride with .5% Surflan Pre-Emergence Herbicide |
| 035512–00034 | Turf Pride Weed & Feed/for St. Augustine & Centipede Lawns |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 035512–00044 | Turf Pride Fertilizer with Pen-Star II Herbicide |
| 035895–00002 | Pool Baron's Rescue Algaecide Concentrate |
| 036123–00001 | Wonder Fluff |
| 038110–00004 | Max-Min Fly Control Mineral ι2 with Rabon (r) Oral Larvicide |
| 038110–00007 | Max-Min Horse Mineral with Rabon Oral Larvicide |
| 038110–00009 | Fly Control Minerals with Rabon Oral Larvicide |
| 039055–00001 | Sylvapine RPO |
| 039412–00005 | Team 130 Root Destroyer |
| 040810–00021 | Irgaguard B4000 |
| 040827–00001 | Florida Fertilizer Fc-435 Citrus Oil |
| 042057–00096 | Morgro 2-In-1 Weed & Feed |
| 042519–00019 | Dorsan 4E-45 |
| 042519–00020 | Dorsan 2E |
| 042519–00021 | Dorsan-4E |
| 042519–00023 | Dorsan Tech |
| 042567–00002 | Quinolate 98 |
| 042750–00077 | Chlorothalonil 98% Technical |
| 042964–00012 | F/H |
| 043410–00007 | Fungicide 4T |
| 043437–00001 | Dussek 6% Copper Naphthenate |
| 043512–20203 | Drop Dead Roach Killer |
| 044673–00001 | Disfecticide |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 045880–00001 | Chlorine Liquified Gas Under Pressure |
| 046266–00001 | Chlorine Liquified Gas Under Pressure |
| 046626–00001 | Agriblend |
| 047075–00001 | Chlorine Liquified Gas Under Pressure |
| 048211–00012 | Stomp-Out Prome-Con |
| 048815–00001 | Net-Dip Disinfectant-Sanitizer Fungicide-Deodorizer |
| 049405–00001 | Chlorine Liquified Gas Under Pressure |
| 049547–00004 | Aien Pine Oil |
| 049547–00009 | Alen 7% Sodium Hypochlorite Bleach Sanitizer |
| 049547–00010 | Pinol |
| 051036–00076 | Azinphosmethyl 2EC |
| 051036–00130 | Azinphosmethyl 35W |
| 051422–00001 | Heavy Duty Algaecide |
| 051422–00002 | Algaecide |
| 051422–00004 | Winterizer |
| 051551–00001 | Chlorine Liquified Gas Under Pressure |
| 052142–00006 | Barricade Permethrin Insecticide Spray |
| 052637–00001 | Agi Insecticide Ear Tag |
| 052991–00005 | Bedoukian Tufted Apple Bud Moth Technical Pheromone |
| 053575–00020 | Isomate-CM/LR Pheromone |
| 053883–00044 | Martins Rabon Cattle Dust |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 053883–00050 | Martin's Dipel Dust |
| 053883–00056 | Martin's Pet Guard Super Dip |
| 054287–00015 | Sawyer Redi Chlor Water Disinfection Tablets |
| 054614–00010 | Tru Shock Tablets |
| 054614–00011 | Tru Shock Granular |
| 054614–00012 | Super Algyzine |
| 054705–00012 | Hose'em Yard Insect Spray |
| 055236–00001 | 303 Black 300 Copper Antifouling Paint |
| 055260–00005 | Syllit 65w Fruit Fungicide |
| 055431–00001 | Termiticide T/C |
| 056159–00009 | Reppers Repellent Grains (shun Repellent Grain) |
| 056261–00002 | MCH Bubble Cap |
| 056261–00003 | Verbenone Pouch |
| 057604–00002 | Clorine Liquified Gas |
| 058111–00005 | Zap II Wasp and Hornet Killer |
| 058199–00010 | Cyzer |
| 058246–00001 | Nematrol |
| 059893–00001 | Coustic-Glo Cleaner Sanitizer B2 |
| 061178–00006 | D-128 |
| 061282–00010 | Snail and Slug Lg Pelleted Bait |
| 061282–00011 | Snail and Slug Ag Pelleted Bait |
| 061483–00063 | Vulcan Premium Four Pound Penta (pcp 2) Concentrate |
| 062190–00002 | Wolmanac Concentrate 50% (for Industrial Use Only) |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 062719–00312 | Drexel Atrazine 4F |
| 062719–00313 | Atrazine 90 |
| 062719–00395 | Goal 2E Herbicide |
| 062719–00400 | Goal 1.6E Herbicide |
| 063709–00001 | Aankill 44 |
| 065072–00008 | KP 3505 |
| 066222–00088 | Prodiamine Technical |
| 066534–00001 | Liquefied Chlorine Gas Under Pressure |
| 067071–00003 | Acticide C98 |
| 067071–00004 | Acticide C40 |
| 067071–00008 | Acticide LG-W |
| 067071–00009 | Acticide 14-WT |
| 067071–00013 | Acticide RS-WT |
| 067071–00014 | Acticide SPX-W |
| 067071–00020 | Acticide 14 M |
| 067071–00027 | Acticide 45M |
| 067071–00032 | Acticide DA |
| 067071–00033 | Acticide DG |
| 067071–00034 | Acticide DC |
| 067071–00035 | Acticide M20sE |
| 067420–00001 | 2K7 Bugstick |
| 067420–00002 | 2K7 Water Soluble Paks |
| 067517–00005 | Rub-On Horse Insecticide |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 067517–00011 | Fly-Pel |
| 067517–00024 | Face Fly Bomb |
| 067517–00032 | General Carbaryl-10 Insecticide |
| 067599–00002 | Copper Poxy |
| 067603–00005 | Ground Zero |
| 067603–00006 | F-1000 Disinfectant Sanitizer Deodorant |
| 067603–00007 | Brevity Blue Liquid Disinfectant Scouring Creme |
| 067603–00008 | S'gone Disinfectant |
| 067603–00009 | Tru-Rite Bleach |
| 067603–00010 | Super-Chlor Sodium Hypochlorite Solution |
| 067760–00060 | Cyren Technical |
| 067869–00041 | N2000 LF C |
| 067869–00042 | N2000 LF P |
| 068539–00005 | Fafard Growing Mix with Rootshield Granules |
| 068543–00010 | Bengal Yard & Patio Outdoor Fogger |
| 068543–00015 | Ultradust Insecticide |
| 068543–00016 | Bengal Roach and Ant Spray III |
| 068688–00022 | Elite Residual Mist Plus |
| 068688–00026 | Elite Residual Mist Plus Concentrate |
| 068688–00030 | Elite Flea and Tick Spray ı8 |
| 068688–00031 | Elite Aloe Repellent Lotion ı8 |
| 068688–00050 | Heartland Freeze Brand Wasp and Hornet Killer |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 068891–00001 | Superquik TM |
| 068891–00003 | Propel Plant Growth Regulator |
| 068891–00004 | Wilthin |
| 068891–00005 | Enfrost |
| 069529–00004 | Borasol-PT |
| 069681–00004 | Clor Mor Chlorinated Tablets, "1" |
| 069681–00005 | Clor Mor Chlorinated Tablets, "3" |
| 069681–00009 | Clor Mor Chlorinating Sticks |
| 070009–00001 | Ethylene Oxide 100 |
| 070271–00008 | Pure Bright Germicidal Bleach |
| 070400–00001 | Harvestsaver |
| 070400–00002 | Haysaver |
| 070648–00001 | Biokryl I |
| 070799–00008 | State Formula 362 No Rinse Cleaner/sanitizer |
| 070799–00010 | State Sok |
| 071089–00001 | Gib-4% |
| 071532–00010 | LG Lambda-Cyhalothrin Technical |
| 071532–00011 | Esfenstar Technical RU |
| 071653–00003 | Cobra Crush |
| 071653–00005 | Cobralin |
| 071927–00001 | Dutch Trig |
| 072087–00001 | Flea Scare |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 072106–00004 | Nulife Fall Winterizer Moss Cure and Lawn Food |
| 072138–00002 | Real-Pine I Cleans Disinfects Deodorizes |
| 072138–00003 | Real-Pine I Cleaner Disinfectant Deodorizer |
| 072138–00005 | Pine-O-Pine Cleanser Disinfectant-Deodorant |
| 072138–00007 | Sani-Lemon 22 |
| 072407–00001 | Sulphuric Acid Desiccant |
| 072451–00003 | Mstrs ECB-2 |
| 072451–00006 | MSTRS OFM |
| 072468–00002 | Betanix Plus |
| 072581–00003 | Low-Temp Sanitizer |
| 072647–00001 | Methyl Salicylate Manufacturing-Use Product |
| 072647–00002 | Repelkote OC Cartons |
| 072647–00004 | Repelkote Surfx Packaging |
| 072839–00001 | Formic Acid Gel |
| 072992–00002 | T344 |
| 072992–00003 | T427 Processing Solution |
| 072992–00007 | T428 Vase Solution |
| 072992–00008 | T333 |
| 073600–00002 | Sweetlix R.O.L. Rabon Molasses Block |
| 073817–00001 | Rezistox |
| 073817–00002 | Prodox Broad Spectrum Algaecide/fungicide |
| 073873–00001 | Anti-Growth Concentrate |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 073873–00002 | Anti-Growth |
| 074128–00001 | Chondrostereum Purpureum Strain Hq1 Concentrate |
| 074128–00002 | Myco-Tech Paste |
| 074152–00002 | Megagro Growth Stimulator Concentrate Gallon |
| 074152–00004 | Megagro Growth Stimulator Concentrate |
| 074326–00001 | No Mo Roaches |
| 074500–00003 | Agenial Algaecide |
| 074627–00004 | LMC 0.115 ICG Insecticide |
| 074681–00005 | Copper Guard SCX 56 Marine Blue |
| 074712–00001 | Specialchlor 90 |
| 074843–00001 | Buzz Off Insect Shield Concentrate |
| 075126–00002 | EEKO Ball-L |
| 075402–00001 | Hilo Ear Mite Remedy for Dogs and Cats |
| 075449–00004 | Sodium Bichromate Crystal |
| 075449–00005 | Sodium Bichromate Dry |
| 075449–00006 | Chromic Acid Wp |
| 075457–00003 | Anti-Pest-O RTU |
| 075499–00010 | Plant Synergists Type Rite |
| 075499–00013 | Plant Synergists Gib A4A7 Technical |
| 075687–00001 | Synper 30-30 |
| 079529–00004 | Black Flag House & Garden Insect Killer Formula S |
| 079529–00009 | Black Flag Ant & Roach Killer |

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

| Registration no. | Product Name |
|---|---|
| 079529–00011 | Black Flag Flying Insect Killer Formula A |
| 079676–00015 | Acephate G-Pro 97 Insecticide |
| 080227–00001 | Mosquito Breeding Blocker |
| 080432–00001 | Nbi Hay Preservative |
| 080697–00002 | Krop-Max |
| 080982–20004 | Aroma |
| 081117–00001 | Four Paws Keep Off! Dog & Cat Repellent |
| 081198–00001 | Freegrow Headstart Sulf. Met. Herb. |
| 081198–00002 | Mustang Met. Methyl DF |

## IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Regulatory Public Docket, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

## List of Subjects

Environmental protection, maintenance fees, pesticides and pests.

Dated: July 18, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. E6–12461 Filed 8–1–06; 8:45 a.m.]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0637; FRL–8082–8]**

## Notice of Filing of Pesticide Petitions for Establishment and Amendment to Regulations for Residues of Iprodione in or on Various Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment and amendment of regulations for residues of iprodione in or on various commodities.

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

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0637 and pesticide petition numbers (PP) 1E6247, 4F3281 and 0F6126, 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–2006–0637. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** *For PP 1E6247*: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: *madden.barbara@epa.gov*.

*For PP 4F4281 and 0F6126*: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: *waller.mary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

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

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

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petitions included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Tolerances

1. *PP 1E6247*. Interregional Project No. 4, New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903, proposes to establish a tolerance for residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on food commodity pistachio at 0.20 parts per million (ppm).

2. *PP 4F4281*. Bayer CropScience, Research Triangle Park, North Carolina 27709, proposes to establish a tolerance for residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on food commodity rapeseed (canola) at 1.0 ppm.

### Amendment to Existing Tolerance

*PP 0F6126*. Bayer CropScience, Research Triangle Park, North Carolina 27709, proposes to amend the tolerance in 40 CFR 180.399 for residues of thefungicide iprodione [3-(3,5-

dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide, its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the food commodity almond, hulls at 5.0 ppm.

For all three petitions (1E6247, 4F4281, 0F6126) gas liquid chromatography using an electron-capture detector is used to measure and evaluate the chemical residues and is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 21, 2006.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–12328 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0204; FRL–8057–2]**

## Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Quizalofop-P-Ethyl in or on Various Food Commodities

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of quizalofop-P-ethyl in or on barley, flax and sunflower seed, and wheat commodities.

**DATES:** Comments must be received on or before September 1, 2006

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0204, 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 pm., 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–2006–0204. 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 website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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:** Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5704; e-mail address: *walters.vickie@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov 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.

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iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

**II. What Action is the Agency Taking?**

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

**New Tolerance**

*PP 0F6076*. Nissan Chemical Industries, Ltd. (Nissan), 7-1, 3-Chome, Kanda-Nishiki-Cho Chiyoda-Ku, Tokyo, 101-0054 Japan, proposes to establish a tolerance for residues of the herbicide quizalofop-P-ethyl in or on barley, flax (seed), and wheat at 0.05 parts per million (ppm); and sunflower (seed) at 2.0 ppm. The analytical method used to collect sunflower and flax field and processing data involves refluxing samples with methanolic potassium hydroxide to convert quizalofop-P-ethyl and quizalofop-P residues to 2-methoxy-6-chloroquinoxaline (MeCHQ). The solution is then acidified and partitioned with hexane to extract the MeCHQ. The hexane fraction is cleaned up by gel permeation chromatography. The appropriate fraction is collected, concentrated and made up to final volume with hexane. Residues are quantified using normal phase high pressure liquid chromatography (HPLC) with fluorescence detection. The limit of quantitation of the method is 0.05 ppm. The analytical method used to collect wheat and barley field and processing data is similar to the method used for flax and sunflower, but has a few modifications. The modified method requires a silica solid phase extraction (SPE) purification for wheat and barley hay and straw matrices prior to gel permeation chromatography (GPC) cleanup. The determination and quantitation of the MeCHQ is conducted using reverse-phase HPLC with the fluorescence detection. The limit of quantitation of the method is still 0.05 ppm.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 26, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. E6–12469 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0006; FRL–8078–7]**

## TSCA Chemical Testing; Receipt of Test Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of test data on *In Vitro* Dermal Absorption Rate Testing of certain chemicals of interest to the Occupational Safety and Health Administration (OSHA). EPA received data on the following chemicals: Dipropylene glycol methyl ether (DPGME) (CAS No. 34590–94–8); naphthalene (CAS No. 91–20–3); diphenylamine (DPA) (CAS No. 122–39–4); 1–nitropropane (CAS No. 108–03–2); 2–nitropropane (CAS No. 79–46–9); isophorone (CAS No. 78–59–1); p-nitrochlorobenzene (CAS No. 100–00–5); and benzyl chloride (CAS No. 100–44–7). These data were submitted pursuant to a test rule issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0006. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

**II. Test Data Submissions**

Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after these data are received by EPA.

1. Test data for DPGME were submitted by the DPGME Dermal Absorption Task Group of the American Chemistry Council's Ethylene and Propylene Glycol Ethers Panel and received by EPA on February 22, 2006. The submission includes a final report titled ''Dipropylene Glycol Methyl Ether: *In Vitro* Dermal Absorption Rate Testing''. (See Document ID No. EPA–HQ–OPPT–2003–0006–0325).

2. Test data for naphthalene were submitted on behalf of the American Chemistry Council Naphthalene Panel's *In Vitro* Dermal Absorption Rate Testing Consortium and received by EPA on March 20, 2006. The submission includes a final report titled ''Naphthalene: *In Vitro* Dermal Absorption Rate Testing.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0328).

3. Test data for DPA were submitted by Chemtura Corporation and received by EPA on March 29, 2006. The submission includes a final report titled ''Determination of the *In Vitro* Absorption Rate of Diphenylamine.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0330).

4. Test data for 1–nitropropane were submitted by the Angus Chemical Company, a wholly owned subsidiary of the Dow Chemical Company, and received by EPA on October 13, 2005. The submission includes a final report titled ''1–Nitropropane: *In Vitro* Dermal Absorption Rate Testing.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0343).

5. Test data for 2–nitropropane were submitted by the Angus Chemical Company, a wholly owned subsidiary of the Dow Chemical Company, and received by EPA on October 13, 2005. The submission includes a final report titled ''2–Nitropropane: *In Vitro* Dermal Absorption Rate Testing.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0344).

6. Test data for isophorone were submitted by the Isophorone Dermal Absorption Task Group of the American Chemistry Council and received by EPA on February 14, 2006. An amended report was also received by EPA on April 17, 2006. The submissions include an original and amended final study report titled: ''Percutaneous Absorption and Cutaneous Disposition of [$^{14}$C]-Isophorone *In Vitro* in Human Skin.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0346).

7. Test data for p-nitrochlorobenzene were submitted by ATK Thiokol and received by EPA on May 25, 2006. The submission includes a final study report titled: ''p-Nitrochlorobenzene: *In Vitro* Dermal Absorption Rate Testing.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0351).

8. Test data for benzyl chloride were submitted by LANXESS Corporation and Ferro Corporation and received by EPA on May 30, 2006. The submission includes a final study report titled: ''Benzyl Chloride: *In Vitro* Dermal Absorption Rate Testing.'' (See Document ID No. EPA–HQ–OPPT–2003–0006–0352).

These chemical substances are used in a wide variety of applications as industrial solvents, which may result in exposures of a substantial number of workers as described in the support document for the proposed rule (64 FR 31074, June 9, 1999, Table 3–Exposure Information for Chemical Substances).

EPA has initiated its review and evaluation process for these submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

**Authority:** 15 U.S.C. 2603.

**List of Subjects**

Environmental protection, Hazardous substances.

Dated: July 20, 2006.

**James Willis,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–12340 Filed 8–1–06; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 19, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 2, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–XXXX.

*Title:* Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 787.

*Estimated Time Per Response:* 25 hours.

*Frequency of Response:* Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

*Total Annual Burden:* 78,700 hours.
*Total Annual Cost:* N/A.
*Privacy Act Impact Assessment:* N/A.
*Needs and Uses:* This collection will be submitted as a new collection (after this 60 day comment period) to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The Commission is requesting OMB review and approval of this new information collection requiring prepaid calling card providers to report quarterly, the percentage of interstate, intrastate and international traffic and call volumes to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund (USF) based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense or a Department of Defense entity.

*OMB Control No.:* 3060–1030.
*Title:* Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands.
*Form No.:* N/A.
*Type of Review:* Revision of a currently approved collection.
*Respondents:* Business or other for-profit, Federal Government, and state, local and tribal government.
*Number of Respondents:* 2,575.
*Estimated Time Per Response:* .50–10 hours.
*Frequency of Response:* On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.
*Total Annual Burden:* 10,000 hours.
*Total Annual Cost:* $1,000,000.
*Privacy Act Impact Assessment:* N/A.
*Needs and Uses:* The Commission is revising the currently OMB-approved collection to reflect changes to the Commission's rules and policies adopted in the *Ninth Report and Order (Ninth R&O)* in ET Docket No. 00–258, wherein the Commission adopted relocation procedures to govern the relocation of: (1) Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band; and (2) Fixed Microwave Service (FS) licensees in the 2110–2150 MHz and 2160–2180 MHz bands. The *Ninth R&O* also adopted cost sharing rules that identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of FS operations in the 2110–2150 MHz band, 2160–2200 MHz band and AWS entrants benefiting from the relocation of BRS operations in the 2150–2160/62 MHz band. The adopted relocation and cost sharing procedures, including the use of a private-sector clearinghouse(s) to administer cost sharing, impose reporting requirements, recordkeeping requirements and third party disclosure requirements that generally follow the Commission's relocation and cost sharing policies delineated in the *Emerging Technologies* proceeding, and as modified by subsequent decisions. These relocation policies are designed to allow early entry for new technology providers by allowing providers of new services to negotiate financial arrangements for re-accommodation of incumbent licensees while ensuring an orderly and expeditious transition of, with minimal disruption to, incumbent BRS operations from the 2150–2160/62 MHz band and FS operations from the 2110–2150 MHz and 2160–2180 MHz bands. Separately, on April 20, 2006, the Commission and the National Telecommunications and Information Administration (NTIA) issued a joint *Public Notice* providing information and guidance on interference coordination, *i.e.*, third party disclosure requirement, in order to protect federal agency spectrum users prior to their relocation. *See* 71 FR 28696 (May 17, 2006). We are also revising this collection to reflect this interference protection/coordination guidance.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–12451 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

July 26, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments October 2, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–B441, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection after this 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0600.
*Title:* Application to Participate in a FCC Auction.
*Form No.:* FCC Form 175.
*Type of Review:* Extension of a currently approved collection.
*Respondents:* Business or other for-profit, not-for-profit institutions, state, local or tribal government.
*Number of Respondents:* 560.
*Estimated Time Per Response:* 1.5 hours.
*Frequency of Response:* On occasion reporting requirement.
*Total Annual Burden:* 765 hours.
*Annual Cost Burden:* N/A.
*Privacy Act Impact Assessment:* N/A.
*Needs and Uses:* This collection will be submitted to the Office of

Management and Budget (OMB) after this 60 day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them.

The information collected will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in a FCC auction. In addition, if the applicant applies for status as a particular type of auction participant pursuant to the Commission's rules, the Commission will use the information to determine if the applicant is eligible for the status requested. The Commission's auction rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants; to deter possible abuse of the bidding and licensing process; and to enhance the use of competitive bidding to assign Commission licenses in furtherance of the public interest. The Commission needs to use the additional information to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. Over the last decade, the Commission has engaged in numerous rulemakings and adjudicatory investigations to prevent companies from circumventing the objectives of the designated entity eligibility rules. If an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission plans to use FCC Form 175 for all upcoming auctions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–12452 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 26, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 1, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an email to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0168.

*Title:* Section 43.43, Report of Proposed Changes in Depreciation Rates.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 10.

*Estimated Time Per Response:* 6,000 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 60,000 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission is submitting this information collection to OMB as an extension (no change in public reporting requirements) in order to obtain the full three-year clearance from them.

Section 43.43 establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of $121 million or more that the Commission has found to be dominant must file information specified in Section 43.43 before making any change in the depreciation rates applicable to their operating plant. In the Report and Order released in December 1999, the Commission adopted the following requirements:

—Carriers are required to file four summary exhibits, along with the underlying data used to generate them, and must provide the depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carriers' depreciation reserve. This is the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates.

—Mid-sized carriers are no longer required to file theoretical reserve studies.

—Certain price cap incumbent LECs in certain instances may request a waiver of the depreciation prescription process. A waiver may be approved when an incumbent LEC, voluntarily, in conjunction with its request for waiver: (1) Adjusts the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off; (2) uses the same depreciation factors and rates for both regulatory and financial accounting purposes; (3) forgoes the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous adjustment, or an above-cap filing; and (4) agrees to submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices. The waiver request must comply with section 1.3 of the Commission's rules. The Commission will consider alternative proposals by carriers seeking a waiver of our depreciation requirements. Such alternative proposals, however, must provide the same protections to guard against adverse impacts on consumers and competition as the conditions adopted in the Order provides. Carriers who obtain a waiver of the depreciation process submit certain information about network retirement

patterns and modernization plans related to their plant accounts so that we can maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. The information that carriers will be required to submit include: forecast additions and retirements for major network accounts; replacement plans for digital central offices; and information concerning relative investments in fiber and copper cable.

The information filed is used by the Commission to establish proper depreciation rates to be charged by carriers, pursuant to Section 220(b) of the Act. Without this information, the validity of the carriers' depreciation policies could not be ascertained.

*OMB Control No.:* 3060–0233.

*Title:* Part 36—Separations.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,804.

*Estimated Time Per Response:* 22 hours per response for annual and quarterly loop cost filings. Five hours per response for quarterly line count data filings.

*Frequency of Response:* On occasion, quarterly, and annual reporting requirements and third party disclosure requirement.

*Total Annual Burden:* 58,418 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission is submitting this information collection to OMB as an extension (no change in public reporting requirements) in order to obtain the full three-year clearance from them.

In order to determine which carriers are entitled to universal service support, all (both non-rural and rural) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by 47 CFR 36.611 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR Part 54. Loops are the telephone lines running from the carriers' switching facilities to the customer. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated quarterly pursuant to 47 CFR 36.612. Pursuant to section 36.613, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in section 51.5 of the Commission's rules. Section 36.612(a) also requires non-rural carriers to file loop counts (no loop cost data) on a quarterly basis. The Commission requires that non-rural carriers submit quarterly loop counts in order to ensure that universal service fund (USF) support for non-rural carriers is accurately calculated when competitive eligible telecommunication carriers (ETCs) are present in the incumbent LECs' operating areas. Quarterly loop cost and loop count data filings are voluntary for rural carriers. When a competitive ETC, however, is operating in an incumbent rural carrier's territory, the incumbent rural carrier is required to submit quarterly loop count data. Quarterly filings of loop counts are necessary because if an incumbent rural carrier does not update its loop count data more often than annually, but its competitor does, the competitor's more recent data may include loops captured from the incumbent since the incumbent's last filing. Thus, the incumbent would continue to receive support based on an overstated number of loops.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–12464 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

July 27, 2006.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 2, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit your all Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0055.

*Title:* Application for Cable Television Relay Service Station License.

*Form Number:* FCC Form 327.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 400.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement; Every five years reporting requirement.

*Total Annual Burden:* 1,266 hours.

*Total Annual Cost:* $88,000.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* FCC Form 327 is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to Part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program

material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (e.g., on one side of a river or mountain) to another point (e.g., the other side of the river or mountain) or many points (''multipoint'') via microwave. The filing is done for an initial license, for modification of an existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with Sections 78.11 to 78.40 of the Commission's Rules. The form consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6–12466 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–10–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CG Docket No. 03–123; DA 06–1506]**

### The Consumer & Governmental Affairs Bureau Reminds State Telecommunications Relay Service (TRS) Programs and Interstate TRS Providers of Their Obligations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission notifies the public, certified state Telecommunications Relay Services (TRS) programs, and interstate TRS providers that they are required to submit to the Commission a designated agent for the service of informal and formal complaints. Additionally, the Commission reminds certified state TRS programs, Video Relay Service, IP Relay of their obligation to notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that the TRS program continues to meet federal minimum standards after implementing the substantive change.

**DATES:** Effective July 25, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Arlene Alexander, (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail: *Arlene.Alexander@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, DA 06–1506, released July 25, 2006. This document reminds certified state TRS programs and interstate TRS providers of their obligation to provide the Commission a designated point of contact for TRS complaints, and of the obligation of certified state TRS programs and RS and IP Relay providers to notify the Commission of any substantive changes in their TRS program, within 60 days of the substantive change, certifying that the TRS provided continues to meet the minimum standards. Any changes to the points of contact or to the TRS program may be sent to the Commission via e-mail to *TRS_POC@fcc.gov.* Contact information for TRS programs is posted on the Consumer & Governmental Affairs Bureau's Web at: *http://www.fcc.gov/cgb/dro/trs_contact_list.html.*

The full text of document DA 06–1506 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–1506 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *www.bcpiweb.com* or call 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document, DA 06–1506, can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

**Synopsis**

On March 6, 2000, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* (*RO & FNPRM*) CC Docket 98–67, FCC 00–56, 15 FCC Rcd 5140 (March 6, 2000), published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000, that adopted regulations requiring certified state Telecommunications Relay Services (TRS) programs and interstate TRS providers submit to the Commission a designated agent for the service of informal and formal complaints. The designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address. Additionally, the Commission required certified state TRS programs to notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that the TRS program continues to meet Federal minimum standards after implementing the substantive change. (*See* 47 CFR 64.604 and 64.605 of the Commission's rules).

Federal Communications Commission.

**Jay Keithley,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E6–12488 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 06–1485]**

### Consumer & Governmental Affairs Bureau Reminds Telecommunications Equipment Manufacturers and Telecommunications Services Providers of Their Obligations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission reminds telecommunications equipment manufacturers and telecommunications service providers of their obligation to designate an agent for service of informal and formal complaints received by the Commission.

**DATES:** Effective July 21, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Arlene Alexander, (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail: *Arlene.Alexander@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, DA 06–1485, released July 21, 2006. This designation or updated designation information may be sent to the Commission via e-mail to *Section255_POC@fcc.gov*. Contact information for section 255 telecommunications equipment manufacturers is posted on the Consumer & Governmental Affairs Bureau's Web site at: *http://www.fcc.gov/cgb/dro/section255_manu.html*; contact information for telecommunications service providers is posted at: *http://www.fcc.gov/cgb/dro/service_providers.html*; and contact information for affected colleges and universities is posted at: *http://www.fcc.gov/cgb/dro/section255_colleges.html*. The Commission asks that covered entities check this information for accuracy. If the information is not accurate, current, or if it is non-existent, please e-mail the correct information to *Section255_POC@fcc.gov*.

The full text of document DA 06–1485 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–1485 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *www.bcpiweb.com* or call 1–800–378–3160. Filings may also be viewed on the Consumer & Governmental Affairs Bureau's Disability Rights Office homepage at *http://www.fcc.gov/cgb/dro*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document, DA 06–1485, can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

**Synopsis**

On September 29, 1999, the Commission released a *Report and Order and Further Notice of Inquiry* (*RO & FNOI*) that adopted regulations implementing section 255 of the Communications Act, which requires telecommunications equipment manufacturers and service providers to ensure that their products are accessible and usable to persons with disabilities, when readily achievable to do so. (*See Implementation of sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996, Report and Order and Further Notice of Inquiry (RO and FNOI)*, WT Docket No. 96–198, FCC 99–181, 16 FCC Rcd 6417 (September 29, 1999), published at 65 FR 63235, November 19, 1999). The regulations require, in part, that equipment manufacturers and service providers covered by section 255 of the Communications Act, designates an agent for service of informal and formal complaints received by the Commission. (*See* 47 CFR 6.18 and 7.18 of the Commission's rules). The designation shall include a name or department designation, business address, telephone number, and, if available, TTY number, facsimile number, and Internet e-mail address.

Federal Communications Commission.

**Jay Keithley,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. E6–12489 Filed 8–1–06; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 010051–037.

*Title:* Mediterranean Space Charter Agreement.

*Parties:* CP Ships USA LLC; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Hapag-Lloyd AG; and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes Farrell Lines, Inc. as a party to the agreement and updates Hapag-Lloyd's corporate name.

*Agreement No.:* 011117–041.

*Title:* United States/Australasia Discussion Agreement.

*Parties:* A.P. Moller-Maersk A/S and Safmarine Container Lines NV; ANL Singapore Pte Ltd.; Australia-New Zealand Direct Line; CMA–CGM, S.A.; Compagnie Maritime Marfret S.A.; CP Ships USA, LLC; Hamburg-Süd; Hapag-Lloyd AG; and Wallenius Wilhelmsen Logistics AS.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011223–034.

*Title:* Transpacific Stabilization Agreement.

*Parties:* APL Co. Pte. Ltd./American President Lines, Ltd.; COSCO Container Lines Company Ltd.; Evergreen Marine Corporation (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011275–021.

*Title:* Australia/United States Discussion Agreement.

*Parties:* A.P. Moller-Maersk A/S; Hamburg-Süd; Safmarine Container Lines NV; and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes Australia-New Zealand Direct Line, a division of CP ships (UK) Limited and CP Ships USA, LLC as parties to the agreement and adds Hapag-Lloyd AG.

*Agreement No.:* 011324–018.

*Title:* Transpacific Space Utilization Agreement.

*Parties:* American President Lines Ltd.; APL Co. Pte Ltd.; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Westwood Shipping Lines; and Yangming Marine Transport Corp.

*Filing Party*: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011325–035.

*Title:* Westbound Transpacific Stabilization Agreement.

*Parties:* American President Lines, Ltd./APL Co. Pte Ltd.; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011407–011.

*Title:* Australia/United States ContainerLine Association.

*Parties:* Hamburg-Süd and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes Australia-New Zealand Direct Line, a division of CP ships (UK) Limited and CP Ships USA, LLC as parties to the agreement and adds Hapag-Lloyd AG.

*Agreement No.:* 011409–013.

*Title:* Transpacific Carrier Services, Inc. Agreement.

*Parties:* American President Lines, Ltd.; APL Co. Pte Ltd.; Evergreen Marine Corporation; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; COSCO Container Lines Co., Ltd.; CMA CGM, S.A.; and China Shipping Container Lines Co., Ltd.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011426–038.

*Title:* West Coast of South America Discussion Agreement.

*Parties:* APL Co. Pte Ltd.; CMA CGM, S.A.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; Hapag-Lloyd AG; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, S.A.; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment removes CP Ships USA LLC as a party to the agreement, reflects CMA's resignation from the agreement effective August 17, 2006, and adds Hapag-Lloyd as a party.

*Agreement No.:* 011574–016.

*Title:* Pacific Islands Discussion Agreement.

*Parties:* Hamburg-Süd; Hapag-Lloyd AG; Polynesia Line Ltd.; Australia-New Zealand Direct Line, a division of CP Ships (UK) Ltd.; CMA CGM SA; and Compagnie Maritime Marfret, SA.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011834–004.

*Title:* Maersk Sealand/Hapag-Lloyd Mediterranean U.S. East Coast Slot Charter Agreement.

*Parties:* A.P. Moller Maersk A/S and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment updates Hapag-Lloyd's corporate name and removes extraneous material from the agreement.

*Agreement No.:* 011870–002.

*Title:* Indian Subcontinent Discussion Agreement.

*Parties:* Evergreen Marine Corp. (Taiwan) Ltd.; Hapag-Lloyd AG; CMA CGM S.A.; Zim Integrated Shipping Services, Ltd.; Shipping Corporation of India; Emirates Shipping Line FZE; MacAndrews & Company Limited; and Nippon Yusen Kaisha.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment adds CMA CGM, S.A.; Zim Integrated Shipping Services, Ltd.; Shipping Corporation of India; Emirates Shipping Line FZE; and MacAndrews & Company Limited as parties to the agreement and updates the corporate name of Hapag-Lloyd.

*Agreement No.:* 011875–002.

*Title:* Zim/Hapag-Lloyd USEC Slot Charter Agreement.

*Parties:* Zim Integrated Shipping Services, Ltd. and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reflects Hapag-Lloyd's new corporate name.

*Agreement No.:* 011969.

*Title:* Zim/Italia Marittima Agreement.

*Parties:* Zim Integrated Shipping Services, Ltd. and Italia Marittima S.p.A.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The agreement authorizes the parties to share vessel space in the trade between U.S. Atlantic ports and ports in North Europe.

By order of the Federal Maritime Commission.

Dated: July 28, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6–12460 Filed 8–1–06; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public; Financial Responsibility to Meet Liability Incurrred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 App. U.S.C. 817 (d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Ambassadors International, Inc.; Ambassadors Cruise Group, LLC, DQSC Operations, LLC d/b/a Delta Queen Steamboat Company; American West Steamboat Company LLC d/b/a American West Steamboat Company; DQ Boat, LLC; AQ Boat, LLC; MQ Boat, LLC; EN Boat LLC; and QW Boat Company LLC,
1071 Camelback Street,
Newport Beach, CA 92660.
Vessels: AMERICAN QUEEN, DELTA QUEEN, MISSISSIPPI QUEEN, EMPRESS OF THE NORTH, QUEEN OF THE WEST.

Carnival PLC and Princess Cruise Lines, Ltd., 24303 Town Center, Suite 200, Valencia, CA 91355–0908.
Vessel: ARTEMIS, ARCADIA.

HAL Nederland N.V., Holland America Line N.V., Holland America Line Inc., (d/b/a Holland America Line), and Carnival Corporation,
300 Elliott Avenue West,
Seattle, WA 98119.
Vessel: VEENDAM.

Holland America Line Inc. (d/b/a Holland America Line), Holland America Line, N.V. and HAL Antillen N.V.,
300 Elliott Avenue West,
Seattle, WA 98119.
Vessel: NOORDAM.

NCL (Bahamas) Ltd. d/b/a Norwegian Cruise Line and NCL America, and Ship Ventures, Inc.,
7665 Corporate Center Drive,
Miami, FL 33126.

Vessel: PRIDE OF HAWAII.

NYK Cruises Co., Ltd. and Azuka II Maritima S.A.,
3–2 Marunouchi 2-Chome, Chiyoda-Ku Tokyo 100–000 Japan.
Vessel: ASUKA II.

Princess Cruise Lines, Ltd. and Carnival PLC,
24305 Town Center Drive, Santa Clarita, CA 91355.
Vessel: CROWN PRINCESS.

Regent Seven Sea Cruises, Inc. and Radisson Severn Seas (FRANCE) N.C.,
1000 Corporate Drive,
Suite 500,
Fort Lauderdale, FL 33334.
Vessels: SEVEN SEAS MARINER.

Regent Seven Sea Cruises, Inc. and A & L CF December (1) Limited,
1000 Corporate Drive,
Suite 500,
Fort Lauderdale, FL 33334.
Vessels: SEVEN SEAS NAVIGATOR.

Regent Seven Sea Cruises, Inc. and Seadance Ltd.,
1000 Corporate Drive, Suite 500,
Fort Lauderdale, FL 33334.
Vessels: SEVEN SEAS VOYAGER.

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International),
1050 Caribbean Way,
Miami, FL 33132–2096.
Vessels: LEGEND OF THE SEAS, SPLENDOUR OF THE SEAS, FREEDOM OF THE SEAS.

West Travel, Inc. (d/b/a Cruise West d/b/a Alaska Sightseeing), and Clipper Cruise Line and Intrav, Inc.,
2301 Fifth Avenue,
Suite 401,
Seattle, WA 98121–1856.
Vessels: NANTUCKET CLIPPER, YORKTOWN CLIPPER.

Dated: July 25, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6–12458 Filed 8–1–06; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public; Indemnification of Passenger for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

American Cruise Lines, Inc.,
741 Boston Post Road,
Suite 200,
Guilford, CT 06437.
Vessel: AMERICAN STAR.

Ambassadors International, Inc., Ambassadors Cruise Group, LLC, DQSC Operations, LLC d/b/a Delta Queen Steamboat Company, American West Steamboat Company LLC d/b/a American West Steamboat Company , DQ Boat, LLC and AQ Boat, LLC, MQ Boat, LLC, EN Boat LLC, QW Boat LLC,
1071 Camelback Street,
Newport Beach, CA 92660.
Vessels: AMERICAN QUEEN, DELTA QUEEN, MISSISSIPPI QUEEN, EMPRESS OF THE NORTH, QUEEN OF THE WEST.

Carnival Corporation (d/b/a Carnival Cruise Lines),
3655 N.W. 87th Avenue,
Miami, FL 33178.
Vessel: CARNIVAL FREEDOM.

Carnival PLC (trading as Cunard Line),
24303 Town Center,
Suite 200,
Valencia, CA 91355–0908.
Vessel: QUEEN VICTORIA.

MSC Corciere S.P.A.,
Piazza Garibaldi 91,
Naples, 80142 Italy.
Vessel: MUSICA.

NCL (Bahamas) Ltd. d/b/a NCL,
7665 Corporate Center Drive,
Miami, FL 33126.
Vessels: NORWEGIAN GEM, NORWEGIAN PEARL.

Princess Cruise Lines, Ltd. and Carnival PLC,
24305 Town Center Drive,
Santa Clarita, CA 91355.
Vessels: ARTEMIS, ARCADIA, EMERALD PRINCESS, ROYAL PRINCESS.

Regent Seven Sea Cruises,
1000 Corporate Drive,
Suite 500,
Fort Lauderdale, FL 33334.
Vessels: SEVEN SEAS MARINER, SEVEN SEAS NAVIGATOR, SEVEN SEAS VOYAGER.

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International),
1050 Caribbean Way,
Miami, FL 33132–2096.
Vessels: FREEDOM OF THE SEAS III, LIBERTY OF THE SEAS.

Saga Cruises Ltd.,
Middelburg Square,
Folkestone, CT20 1 United Kingdom.
Vessel: SAGA RUBY.

West Travel, Inc. (d/b/a Cruise West d/b/a Alaska Sightseeing) and Clipper Cruise Line, Inc.,
2301 Fifth Avenue,
Suite 401,
Seattle, WA 98121–1856.
Vessels: NANTUCKET CLIPPER, YORKTOWN CLIPPER.

Dated: July 25, 2006.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E6–12456 Filed 8–1–06; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Jay R. Rehnstrom, individually and as co–trustee of the Steven Jon Rehnstrom Trust, and Mark D. Rehnstrom, individually and as co–trustee of the Steven Jon Rehnstrom Trust*, all of Sioux Rapids, Iowa, and acting as a group with the Rehnstrom Family, which includes Jay R. Rehnstrom; Mark D. Rehnstrom; Steven Jon Rehnstrom Trust, all of Sioux Rapids, Iowa; Marilyn M. Rehnstrom, Spencer, Iowa; and Anne L. Rehnstrom, Urbandale, Iowa; all to retain voting shares of Little Sioux Bancshares, Inc., Sioux Rapids, Iowa, and thereby indirectly retain voting shares of First State Bank, Sioux Rapids, Iowa.

Board of Governors of the Federal Reserve System, July 27, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–12399 Filed 8–1–06; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2006.

**A. Federal Reserve Bank of New York** (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

*1. Banco Bilbao Vizcaya Argentaria, S.A.*, Bilbao, Spain; to acquire 100 percent of the voting shares of Texas Regional Bancshares, Inc., McAllen, Texas; Texas Regional Delaware, Inc., Wilmington, Delaware; and thereby indirectly acquire voting shares of Texas State Bank, McAllen, Texas.

*2. Banco Bilbao Vizcaya Argentaria, S.A.*, Bilbao, Spain; to acquire 100 percent of the voting shares of State National Bancshares, Inc., Fort Worth, Texas; State National Bancshares of Delaware, Inc., Dover, Delaware; and thereby indirectly acquire voting shares of State National Bank, Fort Worth, Texas.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Sterling Bancshares, Inc.*, Houston, Texas, and Sterling Bancorporation, Inc., Wilmington, Delaware; to merge with, and thereby acquire 100 percent of the voting shares of BOTH, Inc., Kerrville, Texas, and thereby indirectly acquire BOTH of Delaware, Inc., Wilmington, Delaware, and Bank of the Hills, National Association, Kerrville, Texas.

**C. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Community Bancorp*, Las Vegas, Nevada; to acquire 100 percent of the voting shares of Cactus Commerce Bank, an Arizona Banking Corporation, Glendale, Arizona.

Board of Governors of the Federal Reserve System, July 27, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–12398 Filed 8–1–06; 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:** 12 p.m., Monday, August 7, 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 28, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 06–6654 Filed 7–31–06; 9:30 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

### Maximum Per Diem Rates for the Continental United States (CONUS)

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of Per Diem Bulletin 07–1, Fiscal Year (FY) 2007 continental United States (CONUS) per diem rates.

**SUMMARY:** The General Services Administration's (GSA's) annual per diem review has resulted in lodging and meal allowance changes for locations within the continental United States (CONUS) to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 07–1 updates the maximum per diem amounts in existing per diem localities. The standard CONUS lodging rate of $60 is unchanged. The CONUS per diem rates prescribed in Bulletin 07–1 may be found at *http://www.gsa.gov/perdiem*. GSA based the lodging per diem rates on the average daily rate that the lodging industry reports. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy compliant lodging where it is needed. In addition to the annual lodging study, GSA identified 26 new or redefined non-standard areas (NSA's). In order to base its per diem recommendations for those areas on accurate meal cost data, GSA commissioned an out of cycle meal survey in each of the 26 areas. For a complete listing of pertinent information that must be submitted through a Federal executive agency for GSA to restudy a location if a CONUS or standard CONUS per diem rate is insufficient to meet necessary expenses, please review numbers 4 and 5 of our per diem Frequently Asked Questions at (*www.gsa.gov/perdiemfaqs*).

**DATES:** This notice is effective October 1, 2006, and applies for travel performed on or after October 1, 2006 through September 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Lois Mandell, Office of Governmentwide

Policy, Office of Travel, Transportation, and Asset Management, at (202) 501–2824, or by email at *www.gsa.gov/perdiemquestions*. Please cite Notice of Per Diem Bulletin 07–1.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

After an analysis of current data, GSA has determined that current lodging rates for certain localities do not adequately reflect the lodging economics in those areas. Except for two minor changes, GSA generally applied the FY 2006 methodology in developing the FY 2007 rates. The two changes were:

• Excluded properties identified as below industry standard.

• Redefined property selections within NSA's based on updated charge card data, in addition to Federal Executive Board/Federal Executive Agency input, to indicate actual Federal traveler destinations.

A meals study was also conducted for 26 new or redefined NSA's.

**B. Change in standard procedure**

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the internet at *http://www.gsa.gov/perdiem*. This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: July 19, 2006.

**Becky Rhodes,**

*Deputy Associate Administrator.*

[FR Doc. E6–12467 Filed 8–1–06; 8:45 am]

**BILLING CODE 6820–14–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Assessment of Unreimbursed Care among Community Primary Care Physicians.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by October 2, 2006.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

''Assessment of Un-reimbursed Care among Community Primary Care Physicians''

This project is being conducted as part of AHRQ's Primary Care Practice-Based Research Networks (PBRN). One of AHRQ's PBRN contractors, the American Academy of Family Physicians' National Research Network (AAFP–NRN), will survey primary care practices participating in its PBRN in order to assess the current state of unreimbursed medical care provided in community based primary care practices.

There has been substantial research conducted to quantify the amount of unreimbursed care provided in private physicians' offices. This survey will collect information from a sample of community-based primary care practices that are widely representative of private physicians across the United States in order to understand the current state of private primary care office unreimbursed care and help assess factors that encourage and discourage practices from engaging in this activity.

The AAFP–NRN will collaborate with AHRQ on the design of a self-administered, web-based questionnaire. The survey will collect information pertaining to the level of unreimbursed care in the practice as well as characteristics of the practice, the physician(s) and the patient population.

**Methods of Collection**

The survey will be distributed to 800 primary care physicians with an expected response rate of 75% (600 responses). A stratified sampling approach will be used to ensure appropriate representation from the four Census regions, urban and rural areas, and small and large practices. Selected physicians will receive a letter informing them of the purpose of the study and inviting them to participate. Within a week of receiving the invitation letter, respondents will receive an e-mail inviting them to complete a web-based questionnaire. A paper-based version of the questionnaire will be mailed to nonresponders after two weeks. Reminder phone calls will be placed in weeks four and six to all non-responders. If necessary to achieve target response rates, a re-mailing of the paper-based questionnaire will occur in week eight. The questionnaire is estimated to take no more than fifteen minutes to complete.

ESTIMATED ANNUAL RESPONDENT BURDEN

| Data collection effort | Number of respondents | Estimated time per respondent in hours | Estimated total burden hours |
|---|---|---|---|
| Primary care clinicians ..... | 600 | .25 | 150 |

**Estimated Costs to the Federal Government**

The total cost to the government for this activity is estimated to be $129,956.

**Request for Comments**

In accordance with the above-cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care research and information dissemination functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information

collection. All comments will become a matter of public record.

Dated: July 24, 2006.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 06–6621 Filed 8–1–06; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–222]**

### Public Health Assessments Completed April—June 2006

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces those sites for which ATSDR has completed public health assessments during the period from April 2006 through June 2006. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

**FOR FURTHER INFORMATION CONTACT:** William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health assessments was published in the **Federal Register** on May 17, 2006 [71 FR 28702]. This announcement is the responsibility of ATSDR under the regulation ''Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities'' [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

### Availability

The completed public health assessments are available for public inspection at the ATSDR Records Center, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments are often available for public review at local repositories such as libraries in corresponding areas. Many public health assessments are available through ATSDR's Web site at *http://www.atsdr.cdc.gov/HAC/PHA/*. In addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553–6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

### Public Health Assessments Completed or Issued

Between April 2006, and June 2006, public health assessments were issued for the sites listed below:

#### NPL and Proposed NPL Sites

*Alaska*

Eielson Air Force Base (EAFB)—(PB2006–112790).

*Colorado*

Captain Jack Mill—(PB2006–109060).

*Oklahoma*

Hudson Refinery NPL Site—(PB2006–112858).

*Pennsylvania*

Valmont TCE Site: Formerly Valmont Industrial Park Site (a/k/a Valmont Industrial Park)—(PB2006–109770).

*Tennessee*

Smalley-Piper Collierville—(PB2006–110718).

*Virginia*

Naval Weapons Station York Town (NWSY)—(PB2006–111467).

#### Non-NPL Petitioned Sites

*Georgia*

Colonial Pipeline Danielsville Booster Station—(PB2006–112820).

*Tennessee, Loudon County Hazardous Air Pollutants—(PB2006–110717).*

Dated: July 26, 2006.

**Kenneth Rose,**

*Acting Director Office of Policy, Planning, and Evaluation, National Center for Environmental Health/, Agency for Toxic Substances and Disease, Registry.*

[FR Doc. E6–12415 Filed 8–1–06; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–221]**

### Development of Set 20 Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of Development of Toxicological Profiles.

**SUMMARY:** This notice announces the development of Set 20 Toxicological Profiles. Set 20 Toxicological Profiles consists of one new draft and six updated drafts. These profiles will be available to the public on or about October 17, 2006.

**FOR FURTHER INFORMATION CONTACT:** Commander Jessilynn B. Taylor, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–3313. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on December 7, 2005 (70 FR 702840). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28,

1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014) and November 7, 2003 (68 FR 63098).

Notice of the availability of drafts of these six updated and one new toxicological profiles for public review and comment will be published in the **Federal Register** on/or about October 17, 2006, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments will be addressed, and, where appropriate, changes will be incorporated into each profile.

**Development of Toxicological Profiles**

This notice announces the development of one new and six updated toxicological profiles of priority hazardous substances comprising the twentieth set prepared by ATSDR.

The following toxicological profiles are now being developed:

SET 20 TOXICOLOGICAL PROFILES

| Toxicological profile | CAS number |
|---|---|
| 1. Aluminum | 7429–90–5 |
| 2. Cresols | 1319–77–3 |
| 3. Diazinon | 0333–41–5 |
| 4. Dichloropropene, 1,3 | 0542–75–6 |
| 5. Guthion* | 0086–50–0 |
| 6. Phenol | 0108–95–2 |
| 7. Tetrachloroethane, 1,1,2,2- | 0079–34–5 |

* Denotes new profile.

Dated: July 28, 2006.

**Ken Rose,**

*Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health, Agency for Toxic Substances and Disease, Disease Registry.*

[FR Doc. E6–12417 Filed 8–1–06; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency or Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSDR announces the following subcommittee meeting:

*Name:* Program Peer Review Subcommittee (PPRS).

*Time and Date:* 10 a.m.–12 p.m. Eastern Daylight Savings Time, August 14, 2006.

*Place:* The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial 877–315–6535 and enter conference code 383520.

*Purpose:* Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the Board with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

*Matters to be Discussed:* A review of the minutes from the previous meeting; a review and discussion of the draft Program Peer Review Self-Assssment Tool questionnaire; a review and discussion of the partners' and senior management questionnaires; a discussion of the peer review site visit for the Division of Health Assessment and Consultation and the Division of Regional Operation; and a discussion of the peer review timeline.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–.3.150(b))

Agenda items are subject to change as priorities dictate.

**FOR FURTHER INFORMATION CONTACT:** Sandra Malcom, Committee Management Specialist, office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404–498–0622.

**SUPPLEMENTARY INFORMATION:** Public comment period is scheduled for 11:30 a.m.–11:40 a.m.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR. Analysis and Services Office, Centers for Disease Control and Prevention.

Dated: July 28, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 06–6665 Filed 8–1–06; 8:45 am]

**BILLING CODE 4163–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[OMB No.: 0970–0207]**

### Submission for OMB Review; Comment Request; Head Start Program Grant Application and Budget Instrument

*Description:* The Head Start Bureau is proposing to renew, without changes, the Head Start Grant Application and Budget Instrument, which standardizes the grant application information that is requested from all Head Start and Early Head Start grantees applying for continuation grants. The application and budget forms are available on a data diskette and on the web at *www.acfgabi.com.* Completed applications can be transmitted electronically to Regional and Central Offices. The Administration on Children, Youth and Families believes that this application document makes the process of applying for Head Start program grants more efficient for applicants.

*Respondents:* Head Start and Early Head Start grantees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| HS grant and budget instrument | 1,600 | 1 | 33 | 52,800 |
| Estimated total annual burden hours: | | | | 52,800 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*.

*OMB Comment:* OMB is required to make a decision concerning the collection information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@eop.gov*.

Dated: July 27, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–6619 Filed 8–1–06; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[OMB No. 0980–0270]**

### Submission for OMB Review; Comment Request; Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities

*Description:* Federal statute and regulation require each State Protection and Advocacy (P&A) System to prepare and submit to public comment a Statement of Goals and Priorities (SGP) for the P&A for Developmental Disabilities (PADD) program for each coming fiscal year. While the P&A is mandated to protect and advocate under a range of different Federally authorized disabilities programs, only the PADD program requires an SGP. Following the required public input for the coming fiscal year, the P&As submit the final version of this SGP to the Administration on Developmental Disabilities (ADD). ADD will aggregate the information in the SGPs into a national profile of programmatic emphasis for P&A Systems in the coming year. This aggregation will provide ADD with a tool for monitoring of the public input requirement. Furthermore, it will provide an overview of program direction, and permit ADD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act of 1993.

*Respondents:* State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| P&A SGP | 57 | 1 | 44 | 2,508 |
| Estimated Total Annual Burden Hours: | | | | 2,508 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection: E-mail address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *Ketherine__T.__Astrich@omb.eop.gov.*

Dated: July 27, 2007.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–6620 Filed 8–1–06; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2007

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2007 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2007.

For FY 2007, the animal drug user fee rates are: $168,600 for an animal drug application; $84,300 for a supplemental animal drug application for which safety or effectiveness data is required; $4,115 for an annual product fee; $51,350 for an annual establishment fee; and $44,850 for an annual sponsor fee. FDA will issue invoices for FY 2007 product, establishment, and sponsor fees by December 30, 2006, and these invoices will be due and payable by January 31, 2007.

The application fee rates are effective for applications submitted on or after October 1, 2006, and will remain in effect through September 30, 2007. Applications will not be accepted to review until FDA has received full payment of application fees and any other animal drug user fees owed.

**FOR FURTHER INFORMATION CONTACT:** Visit the FDA Web site at *http://www.fda.gov/oc/adufa* or contact Robert Miller, Center for Veterinary Medicine (HFV–

10), Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 240–276–9707. For general questions, you may also e-mail the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 740 of the act (21 U.S.C. 379j-12) establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j-12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j-12(d)).

For FY 2004 through FY 2008, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2004 are subject to adjustment for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for inflation and workload.

## II. Revenue Amount for FY 2007 and Adjustments for Inflation and Workload

### *A. Statutory Fee Revenue Amounts*

ADUFA (Public Law 108–130) specifies that the aggregate revenue amount for FY 2007 for each of the four animal drug user fee categories is $2,500,000, before any adjustments for inflation or workload are made (see 21 U.S.C. 379j-12(b)(1)-(4)).

### *B. Inflation Adjustment to Fee Revenue Amount*

ADUFA provides that fee revenue amounts for each FY after 2004 shall be adjusted for inflation (see 21 U.S.C. 379j-12(c)(1)). The adjustment must reflect the greater of: (1) The total percentage change that occurred in the Consumer Price Index (CPI) for all urban consumers (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in Washington, DC. ADUFA provides for this annual adjustment to be cumulative and compounded annually after FY 2004 (see 21 U.S.C. 379j-12(c)(1)).

The inflation adjustment for FY 2005 was 4.42 percent. This was the greater of the CPI increase during the 12-month period ending June 30, 2004, (3.27 percent) or the increase in pay for FY 2004 for Federal employees stationed in Washington, DC (4.42 percent).

The inflation adjustment for FY 2006 was 3.71 percent. This was the greater of the CPI increase during the 12-month period ending June 30, 2005, (2.53 percent) or the increase in pay for FY 2005 for Federal employees stationed in Washington, DC (3.71 percent).

The inflation adjustment for FY 2007 is 4.32 percent. This is the greater of the CPI increase for the 12-month period ending June 30, 2006, (4.32 percent) or the increase in pay for FY 2006 for Federal employees stationed in Washington, DC (3.44 percent).

Compounding these amounts (1.0442 times 1.0371 times 1.0432) yields a total compounded inflation adjustment of 12.97 percent for FY 2007.

The inflation-adjusted revenue amount for each category of fees for FY 2007 is the statutory fee amount ($2,500,000) increased by 12.97 percent, the inflation adjuster for FY 2007. The inflation-adjusted revenue amount is $2,824,250 for each category of fee, for a total inflation-adjusted fee revenue amount of $11,297,000 for all four categories of fees in FY 2007.

### *C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount*

For each FY beginning in FY 2005, ADUFA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j-12(c)(2)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 3-year period that ended on September 30, 2002 (the base years), and the average number of each of these types of applications and submissions over the most recent 3-year period that ended May 31, 2006.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 3-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 3 years. Column 5 of table 1 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1 the sum of the values in column 5 is added, reflecting a total change in workload of negative 10.5 percent for FY 2007. This is the workload adjuster for FY 2007.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

| Application Type | Column 1 3–Year Avg. (Base Years) | Column 2 Latest 3–Year Avg. | Column 3 Percent Change | Column 4 Weighting Factor | Column 5 Weighted % Change |
|---|---|---|---|---|---|
| New Animal Drug Applications (NADAs) | 22 | 13 | -41% | 3% | -1.2% |
| Supplemental NADAs with Safety or Efficacy Data | 31 | 13 | -58% | 12% | -7.0% |
| Manufacturing Supplements | 368 | 424 | +15% | 25% | +3.8% |
| Investigational Study Submissions | 272 | 259 | -5% | 46% | -2.3% |
| Investigational Protocol Submissions | 283 | 208 | -27% | 14% | -3.8% |

TABLE 1.—WORKLOAD ADJUSTER CALCULATION—Continued

| Application Type | Column 1 3–Year Avg. (Base Years) | Column 2 Latest 3–Year Avg. | Column 3 Percent Change | Column 4 Weighting Factor | Column 5 Weighted % Change |
|---|---|---|---|---|---|
| FY 2007 Workload Adjuster | | | | | -10.5% |

ADUFA specifies that the workload adjuster may not result in fees that are less than the inflation-adjusted revenue amount (21 U.S.C. 379j-12(c)(2)(B)). For this reason, the workload adjustment will not be applied in FY 2007, and the inflation-adjusted revenue amount for each category of fees for FY 2007 ($2,824,250) becomes the revenue target for fees in FY 2007, for a total inflation-adjusted fee revenue target in FY 2007 of $11,297,000 for fees from all four categories.

## III. Application Fee Calculations for FY 2007

The terms ''animal drug applications'' and ''supplemental animal drug applications'' are defined in 21 U.S.C. 379j–11(1).

### *A. Application Fee Revenues and Numbers of Fee-Paying Applications*

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $2,824,250 in fee revenue for FY 2007. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document. The fee for a supplemental animal drug application for which safety or effectiveness data are required is to be set at 50 percent of the animal drug application fee (see 21 U.S.C. 379j-12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $2,824,250, FDA must first make some assumptions about the number of fee-paying applications and supplements it will receive in FY 2007.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2007, FDA is assuming that the number of applications that will pay fees in FY 2007 will equal the average number of submissions over the 4 most recent years (including an estimate for the current year). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after nearly 3 years of experience with this program.

Over the past 4 years, the average number of animal drug applications that would have been subject to the full fee was 10.25, including the number for the most recent year, estimated at 6. Over this same period, the average number of supplemental applications that would have been subject to half of the full fee was 13, including the number for the most recent year, estimated at 16.

Thus, for FY 2007, FDA estimates receipt of 10.25 fee paying original applications and 13 fee-paying supplemental animal drug applications.

### *B. Fee Rates for FY 2007*

FDA must set the fee rates for FY 2007 so that the estimated 10.3 applications that pay the full fee and the estimated 13 supplements that pay half of the full fee will generate a total of $2,824,250. To generate this amount, the fee for an animal drug application, rounded to the nearest hundred dollars, will have to be $168,600, and the fee for a supplemental animal drug application for which safety or effectiveness data are required will have to be $84,300.

## IV. Product Fee Calculations for FY 2007

### *A. Product Fee Revenues and Numbers of Fee-Paying Products*

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act, and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-12(a)(2)). The term ''animal drug product'' is defined in 21 U.S.C. 379j-11(3). The product fees are to be set so that they will generate $2,824,250 in fee revenue for FY 2007. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug product fees to realize $2,824,250, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2007. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2007, FDA found a total of 762 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that a total of 762 products will be subject to this fee in FY 2007.

In estimating the fee revenue to be generated by animal drug product fees in FY 2007, FDA is assuming that 10 percent of the products invoiced, or 76, will not pay fees in FY 2007 due to fee waivers and reductions. Based on experience with other user fee programs and the first 3 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2007.

Accordingly, the agency estimates that a total of 686 (762 minus 76) products will be subject to product fees in FY 2007.

### *B. Product Fee Rates for FY 2007*

FDA must set the fee rates for FY 2007 so that the estimated 686 products that pay fees will generate a total of $2,824,250. To generate this amount will require the fee for an animal drug product, rounded to the nearest 5 dollars, to be $4,115.

## V. Establishment Fee Calculations for FY 2007

### *A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments*

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C.

379j-12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year (see 21 U.S.C. 379j-12(a)(3)). The term ''animal drug establishment'' is defined in 21 U.S.C. 379j-11(4). The establishment fees are to be set so that they will generate $2,824,250 in fee revenue for FY 2007. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug establishment fees to realize $2,824,250, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2007. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2007, FDA found a total of 61 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 61 establishments will be subject to this fee in FY 2007.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2007, FDA is assuming that 10 percent of the establishments invoiced, or six, will not pay fees in FY 2007 due to fee waivers and reductions. Based on experience with the first 3 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2007.

Accordingly, the agency estimates that a total of 55 establishments (61 minus 6) will be subject to establishment fees in FY 2007.

*B. Establishment Fee Rates for FY 2007*

FDA must set the fee rates for FY 2007 so that the estimated 55 establishments that pay fees will generate a total of $2,824,250. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest 50 dollars, to be $51,350.

## VI. Sponsor Fee Calculations for FY 2007

*A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors*

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the act or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive; and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-11(6) and 379j-12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j-12(a)(4)). The sponsor fees are to be set so that they will generate $2,824,250 in fee revenue for FY 2007. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug sponsor fees to realize $2,824,250, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2007. Based on the number of firms that would have met this definition in each of the past 3 years, FDA estimates that a total of 133 sponsors will meet this definition in FY 2007.

Careful review indicates that about one third or 33 percent of all of these sponsors will qualify for minor use/minor species exemption. Based on the agency's experience with sponsor fees in FY 2004, FY 2005 and FY 2006, FDA's current best estimate is that an additional 20 percent will qualify for other waivers or reductions, for a total of 53 percent of the sponsors invoiced, or 70, who will not pay fees in FY 2007 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2007.

Accordingly, the agency estimates that a total of 63 sponsors (133 minus 70) will be subject to sponsor fees in FY 2007.

*B. Sponsor Fee Rates for FY 2007*

FDA must set the fee rates for FY 2007 so that the estimated 63 sponsors that pay fees will generate a total of $2,824,250. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest 50 dollars, to be $44,850.

## VII. Adjustment for Excess Collections

Under the provisions of ADUFA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce the adjusted aggregate revenue amount in a subsequent year by that excess amount (21 U.S.C. 379j-12(g)(4)). In FY 2004 FDA collected $170,150 more than was provided for in appropriations, and in FY 2005 at the end of the year the amount collected was less than provided in appropriations. No adjustment under this provision is being made for fees assessed in FY 2007, however, because a number of waiver requests for fees submitted in FY 2004 are still under consideration. Only after those waiver requests have been evaluated will FDA be able to determine if collections in FY 2004, net of waivers granted, still exceeded the appropriation.

## VIII. Fee Schedule for FY 2007

The fee rates for FY 2007 are summarized in table 2.

TABLE 2.—FY 2007 FEE RATES

| Animal Drug User Fee Category | Fee Rate for FY 2007 |
|---|---|
| Animal Drug Application Fee | |
| Animal Drug Application | $168,600 |
| Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required | $84,300 |
| Animal Drug Product Fee | $4,115 |
| Animal Drug Establishment Fee[1] | $51,350 |
| Animal Drug Sponsor Fee[2] | $44,850 |

[1]An animal drug establishment is subject to only one such fee each fiscal year.

[2]An animal drug sponsor is subject to only one such fee each fiscal year.

## IX. Procedures for Paying the FY 2007 Fees

*A. Application Fees and Payment Instructions*

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2006. Payment must be made in U. S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number, beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the check and printed copy of the cover sheet to: US Bank, Attn: Government Lockbox

953877, 1005 Convention Plaza, St. Louis, Missouri 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the US Bank at 314–418–4821. This phone number is only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530 19 6965. (Note: In no case should the check for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's Center for Veterinary Medicine. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's Center for Veterinary Medicine, or the date US Bank notifies FDA that your check in the full amount of the payment due has been received. US Bank is required to notify FDA within 1 working day, using the Payment Identification Number described previously.

*B. Application Cover Sheet Procedures*

Step One—Create a user account and password. Log onto the ADUFA website at *http://www.fda.gov/oc/adufa* and, under the ''Forms'' heading, click on the link ''User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process. It may take a day or two to get the organization number and have the user account and password established.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the Cover Sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the Payment for your application as described in section IX.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Place, Rockville, Maryland 20855.

*C. Product, Establishment and Sponsor Fees*

By December 30, 2006, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2007 using this Fee Schedule. Payment will be due and payable by January 31, 2007. FDA will issue invoices in October 2007 for any products, establishments, and sponsors subject to fees for FY 2007 that qualify for fees after the December 2006 billing.

Dated: July 26, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–12396 Filed 8–1–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Prescription Drug User Fee Rates for Fiscal Year 2007

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2007. The Federal Food, Drug, and Cosmetic Act, as amended by the Prescription Drug User Fee Amendments of 2002 (Title 5 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (PDUFA III)), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts for application fees, establishment fees, and product fees for FY 2007 were established by PDUFA III. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the revenue levels established in the statute, after those amounts have been first adjusted for inflation and workload. This notice establishes fee rates for FY 2007 for application fees for an application requiring clinical data ($896,200), for an application not requiring clinical data or a supplement requiring clinical data ($448,100), for establishment fees ($313,100), and for product fees ($49,750). These fees are effective on October 1, 2006, and will remain in effect through September 30, 2007. For applications and supplements that are submitted on or after October 1, 2006, the new fee schedule must be used. Invoices for establishment and product fees for FY 2007 will be issued in August 2006, using the new fee schedule.

**FOR FURTHER INFORMATION CONTACT:** Frank Claunts, Office of Management (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The FFDCA, sections 735 and 736 (21 U.S.C. 379g and h), establishes three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 2003 through FY 2007, base revenue amounts for application fees, establishment fees, and product fees are established by PDUFA III. Base revenue amounts established for years after FY 2003 are subject to adjustment for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the revenue levels established in the statute, after those amounts have been first adjusted for inflation and workload. The revenue levels established by PDUFA III continue the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2007 for application, establishment, and product fees. These fees are effective on October 1, 2006, and will remain in effect through September 30, 2007.

#### II. Revenue Amounts for FY 2007, and Adjustments for Inflation and Workload

*A. Statutory Fee Revenue Amounts*

PDUFA III specifies that the fee revenue amount for FY 2007 for application fees is $86,434,000 and for both product and establishment fees is $86,433,000, for a total of $259,300,000 from all three categories of fees (21 U.S.C. 379h(b), before any adjustments are made.

*B. Inflation Adjustment to Fee Revenue Amount*

PDUFA III provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of the following amounts: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. PDUFA III provides for this annual adjustment to be cumulative and compounded annually after FY 2003 (see 21 U.S.C. 379h(c)(1)).

The inflation increase for FY 2004 was 4.27 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous FY (2003 in this case) for Federal employees stationed in the Washington, DC metropolitan area (4.27 percent).

The inflation increase for FY 2005 was 4.42 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2004—which was 3.27 percent) or the increase in pay for the previous FY (2004 in this case) for Federal employees stationed in the Washington, DC metropolitan area (4.42 percent).

The inflation adjustment for FY 2006 was 3.71 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2005—which was 2.53 percent) or the increase in pay for FY 2005 for Federal employees stationed in Washington, DC (3.71 percent).

The inflation adjustment for FY 2007 is 4.32 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2006—which is 4.32 percent) or the increase in pay for FY 2006 for Federal employees stationed in Washington, DC (3.44 percent).

Compounding these amounts (1.0427 x 1.0442 x 1.0371 x 1.0432) yields a total compounded inflation adjustment of 17.80 percent for FY 2007.

The inflation adjustment for each category of fees for FY 2007 is the statutory fee amount increased by 17.80 percent, the inflation adjuster for FY 2007. The FY 2007 inflation-adjusted revenue amount for application fees is $101,819,252 ($86,434,000 x 1.1780). For both product and establishment fees the inflation-adjusted revenue amount is $101,818,074 each ($86,433,000 x 1.1780). The total inflation-adjusted fee revenue amount for all three fee categories combined is $305,455,400 in FY 2007.

*C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount*

For each FY beginning in FY 2004, PDUFA III provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see 21 U.S.C. 379h(c)(2)).

The conference report accompanying PDUFA III, House of Representatives Report number 107–481, provides guidance on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision (human drug applications, commercial investigational new drug applications, efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2006.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the average percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of table 1 is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total increase in workload of 6.3 percent for FY 2007 when compared to the base years.

TABLE 1.—SUMMARY WORKLOAD ADJUSTER CALCULATION—FY 2007

| Application Type | Column 1 5-Year Average Base Years | Column 2 Latest 5-Year Average | Column 3 Percent Change | Column 4 Weighting Factor | Column 5 Weighted Percent Change |
|---|---|---|---|---|---|
| NDAs/BLAs | 119.6 | 120.4 | 0.7% | 36.6% | 0.25% |
| Commercial INDs | 629.8 | 676.8 | 7.5% | 44.0% | 3.28% |
| Efficacy supplements | 159.2 | 167.4 | 5.2% | 7.5% | 0.38% |
| Manufacturing supplements | 2100.6 | 2522.4 | 20.1% | 11.9% | 2.39% |
| FY 2007 workload adjuster | | | | | 6.30% |

Increasing the inflation-adjusted revenue amount for application fees of $101,819,252 by the FY 2007 workload adjuster (6.3 percent) results in an increase of $6,414,613, for a total inflation and workload adjusted application fee revenue amount of $108,233,865. Increasing the inflation-adjusted revenue amount for establishment and product fees, each of which is $101,818,074, by the FY 2007 workload adjuster (6.3 percent) results in an increase of $6,414,539, for a total inflation and workload adjusted application fee revenue amount of $108,232,613 for each category. The total FY 2007 inflation and workload adjusted fee revenue target for all three fee categories combined is $324,699,091.

**III. Adjustment for Excess Collections in Previous Years**

Under the provisions of PDUFA, as amended, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its

anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA fee revenue. As of September 30, 2005, collections for FY 1998 totaled $117,849,016—or $727,016 in excess of the appropriation limit. Also, in FY 2004 Congress appropriated a total of $249,825,000 to FDA in PDUFA fee revenue, and FDA collected a total of $257,055,606 as of September 30, 2005. This is $7,230,906 in excess of appropriations. The total in excess collections for the 2 years is $7,957,922. These are the only fiscal years since 1997 in which FDA has collected more in PDUFA fees than Congress appropriated.

The total of $7,957,922 will be offset against FY 2007 revenue collections, lowering the net amount that would otherwise be collected. One-third of this amount, or $1,985,974, will be subtracted from the FY 2007 adjusted revenue amount for each fee category in the previous section. Thus, after adjustment for prior-year excess collections, the adjusted FY 2007 revenue target for each fee category is as follows:

- Application fee revenue amount: $105,581,224 ($108,233,865 - $2,652,641)
- Establishment fee revenue amount: $105,579,972 ($108,232,613 - $2,652,641)
- Product fee revenue amount: $105,579,973 ($108,232,613 - $2,652,640)

Thus, the adjusted revenue amount from all three categories after this adjustment totals $316,741,167.

## IV. Final Year Adjustment

Under the provisions of PDUFA, as amended, the Secretary may, in addition to the inflation and workload adjustments, further increase the fees and fee revenues if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for the process for the review of human drug applications for the first 3 months of FY 2008. The rationale for the amount of this increase shall be contained in the annual notice establishing fee revenues and fees for FY 2007 (21 U.S.C. 379h(c)(3)).

As of June 30, 2006, FDA has unallocated cash carryover balances of $42,777,720. In addition, the agency is estimating that application fees over the final 3 months of FY 2006 will add another $18,500,000 to this balance, for an estimated cash carryover of $61,277,720 on September 20, 2006.

In FY 2007, FDA expects to collect a total of $316,741,167 after adjustments, as noted at the end of section III of this document. To sustain current operations in FY 2007, FDA expects to obligate a total of $327 million (compared with anticipated obligations in FY 2006 of about $314,500,000). The anticipated obligations of $327 million will be about $10,259,000 more than anticipated collections. This will reduce the estimated carry-over balance over the course of FY 2007 from $61,278,000 to an estimated $51,019,000 ($61,278,000 - $10,259,000).

To sustain operations supported from user fees for the first 3 months of FY 2008, FDA estimates that it will need one-fourth of the $327 million it expects to spend in FY 2007, or $81,750,000. However, this amount will need to be increased for inflation by an estimated 5.8 percent (the average amount by which FDA's costs per FTE have increased over the past 5 years). The amount needed to sustain operations for the first 3 months of FY 2008 is thus estimated at $86,491,500, while the estimated carry-over balance at the beginning of FY 2008 is estimated at only $51,019,000. Thus, FDA will need an additional $35,472,500 as the final year adjustment to assure sufficient operating reserves for the first 3 months of FY 2008. One-third of this amount, rounded to the nearest thousand, or $11,824,000, will be added to the FY 2007 adjusted revenue amount for each fee category in the previous section. Thus, after the final-year adjustment, the adjusted FY 2007 revenue target for each fee category is as follows:

- Application fee revenue amount: $117,405,224 ($105,581,224 + $11,824,000)
- Establishment fee revenue amount: $117,403,972 ($105,579,972 + $11,824,000)
- Product fee revenue amount: $117,403,973 ($105,579,973 + $11,824,000)

Thus, after the final year adjustment, the adjusted FY 2007 revenue target from all fee types combined totals $352,141,167.

## V. Application Fee Calculations

PDUFA III provides that the rates for application, product, and establishment fees be established 60 days before the beginning of each FY (21 U.S.C. 379h(c)(4)). The fees are to be established so that they will generate the fee revenue amounts specified in the statute, as adjusted for inflation and workload.

### *A. Application Fee Revenues and Application Fees*

The application fee revenue amount that PDUFA III established for FY 2007 is $117,381,224, as calculated in the previous section. Application fees will be set to generate this amount.

### *B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees*

For FY 2003 through FY 2007, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the five most recent FYs. This use of the rolling average of the five most recent FYs is the same method that was applied in making the workload adjustment.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2007, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2002 through FY 2006. For FY 2006, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months.

Table 2 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2006, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2006. Column 4 estimates the 12-month total fee-paying FAEs for FY 2006 based on the applications received through June 30, 2006. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if it initially paid a full application fee, or one-eighth of an FAE if it initially paid one-half of the full application fee amount.

TABLE 2.—FY 2006 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2006, AND PROJECTED THROUGH SEPTEMBER 30, 2006

| Application or Action | Column 1 Total Received Through June 30, 2006 | Column 2 Fee Exempt or Waived Through June 30, 2006 | Column 3 Total Fee Paying Through June 30, 2006 | Column 4 12-Month Fee-Paying Projection |
|---|---|---|---|---|
| Applications requiring clinical data | 72.25 | 21.25 | 51 | 68 |
| Applications not requiring clinical data | 7.5 | 3.5 | 4 | 5.33 |
| Supplements requiring clinical data | 60.25 | 13.75 | 46.5 | 62 |
| Withdrawn or refused to file | 1 | 0 | 1 | 1.33 |
| Total | 141 | 38.5 | 102.5 | 136.7 |

In the first 9 months of FY 2006, FDA received 141 FAEs, of which 102.5 were fee-paying. Based on data from the last 7 FYs, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 102.5 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the FY and projects the number of fee-paying FAEs in FY 2006 at 136.7.

All pediatric supplements, which had been exempt from fees prior to January 4, 2002, were required to pay fees effective January 4, 2002. This is the result of section 5 of the Best Pharmaceuticals for Children Act that repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, in estimating FY 2006 fee-paying receipts we must include in our calculations all the pediatric supplements submitted in the past 5 years that were previously exempt from fees prior to January 4, 2002. The exempted number of FAEs for pediatric supplements for FY 2002 was 4.5. Because fees on these supplements are paid for pediatric applications submitted in FY 2003 and beyond, the number of pediatric supplement FAEs exempted from fees in FY 2002 (the last year in table 3 of this document when fees were exempted) are added to the total of fee-paying FAEs received each year.

As table 3 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, assuming all pediatric supplements had paid fees, and including our estimate for FY 2006, is 131 FAEs. FDA will set fees for FY 2007 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 3.—FEE-PAYING FULL APPLICATION EQUIVALENT—5-YEAR AVERAGE

| Year | 2002 | 2003 | 2004 | 2005 | 2006 | 5-Year Average |
|---|---|---|---|---|---|---|
| Fee-paying FAEs | 127.6 | 119.5 | 145.1 | 121.5 | 136.7 | 130.1 |
| Exempt pediatric supplement FAEs | 4.5 | 0 | 0 | 0 | 0 | 0.9 |
| Total | 132.1 | 119.5 | 145.1 | 121.5 | 136.7 | 131.0 |

The FY 2007 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 131, into the fee revenue amount to be derived from application fees in FY 2007, $117,405,224. The result, rounded to the nearest $100, is a fee of $896,200 per full application requiring clinical data, and $448,100 per application not requiring clinical data or per supplement requiring clinical data.

## VI. Fee Calculations for Establishment and Product Fees

### *A. Establishment Fees*

At the beginning of FY 2006, the establishment fee was based on an estimate that 375 establishments would be subject to, and would pay, fees. By the end of FY 2006, FDA estimates that applicants have been billed for 400 establishment fees, before all decisions on requests for waivers or reductions are made. As in previous years, FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2006, for a net of 375 fee-paying establishments. FDA will use this same number again, 375, for its FY 2007 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($117,403,972) by the estimated 375 establishments, for an establishment fee rate for FY 2006 of $313,100 (rounded to the nearest $100).

### *B. Product Fees*

At the beginning of FY 2006, the product fee was based on an estimate that 2,350 products would be subject to and pay product fees. By the end of FY 2006, FDA estimates that 2,400 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. Assuming that there will be about 40 waivers and reductions granted, FDA estimates that 2,360 products will qualify for product fees in FY 2006, after allowing for waivers and reductions, and will use this number for its FY 2007 estimate. Accordingly, the FY 2007 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($117,403,973) by the estimated 2,360 products for a FY 2007 product fee of $49,750 (rounded to the nearest $10).

## VII. Fee Schedule for FY 2007

The fee rates for FY 2007 are set out in table 4 of this document:

TABLE 4.

| FEE CATEGORY | FEE RATES FOR FY 2007 |
|---|---|
| APPLICATIONS | |
| Requiring clinical data | $896,200 |
| Not requiring clinical data | $448,100 |
| Supplements requiring clinical data | $448,100 |
| ESTABLISHMENTS | $313,100 |
| PRODUCTS | $49,750 |

### VIII. Implementation of Adjusted Fee Schedule

*A. Application Fees*

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2006. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your payment can be mailed to: Food and Drug Administration, P.O. Box 360909, Mellon Client Service Center, 500 Ross St., rm. 670, Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909), Mellon Client Service Center, 500 Ross St., rm. 670, Pittsburgh, PA 15262–0001. (Note: This Mellon Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 360909) is written on the check. The tax identification number of the Food and Drug Administration is 530 19 6965.

*B. Establishment and Product Fees*

By August 31, 2006, FDA will issue invoices for establishment and product fees for FY 2007 under the new fee schedule. Payment will be due on October 1, 2006. FDA will issue invoices in October 2007 for any products and establishments subject to fees for FY 2007 that qualify for fees after the August 2006 billing.

Dated: July 26, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–12397 Filed 8–1–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Medical Device User Fee Rates for Fiscal Year 2007

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2007. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) and the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), authorizes FDA to collect user fees for certain medical device applications. The FY 2007 fee rates are provided in this notice. For all applications submitted on or after October 1, 2006, and through September 30, 2007, fees must be paid at the FY 2007 rates at the time the applications are submitted to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your check is received. This notice provides details on how fees for FY 2007 were determined and payment procedures for medical device applications subject to user fees.

**FOR FURTHER INFORMATION CONTACT:** For further information on MDUFMA: Visit the FDA Web site *http://www.fda.gov/cdrh/mdufma*.

For questions relating to this notice: Frank Claunts, Office of Management (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 738 of the act (21 U.S.C. 379 j) establishes fees for certain medical device applications and supplements. Under statutorily defined conditions, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

Under MDUFMA, the fee rate for each type of application is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol, or a biologic licensing application). MDUFSA specifies that the standard fee for a premarket application submitted during FY 2007 is $281,600. From this starting point, this notice establishes fee rates for FY 2007. These fees are effective on October 1, 2006, and will remain in effect through September 30, 2007.

### II. Fee Calculations for FY 2007

Under the act, all fees are set as a percent of the full fee for a premarket application (see 21 U.S.C. 379j(a)(1)(A)), and the act sets the standard fee for a premarket application at $281,600 for FY 2007 (see 21 U.S.C. 379j(c)(1); this is referred to as the ''base fee.'' A 180-day supplement is set at 21.5 percent of the base fee; the fee for a real-time supplement is set at 7.2 percent of the base fee (see 21 U.S.C. 379j(a)(1)(A)).

For all applications other than premarket notification submissions (510(k)s), the small business rate is 38 percent of the standard (full fee) rate (see 21 U.S.C. 379j(d)(2)(C)). For 510(k) premarket notification submissions, the fees are to be set so that fees from all 510(k)s would produce revenue as if all were assessed a fee of 1.42 percent of the base fee, but these fee rates are to be adjusted so that the fee paid by a qualifying small business is 80 percent of the full rate for a 510(k) premarket notification submission (see 21 U.S.C. 379j(e)(2)(C)). Based on FDA's estimates, about 19 percent of 510(k) premarket notifications will qualify for the small business fee, and about 81 percent will pay the standard (full) fee. The FY 2007 fee rates for all application categories are set out in table 1 of this document.

TABLE 1.—FEE TYPES, PERCENT OF PMA FEE, AND FY 2007 FEE RATES

| Application Fee Type | Full Fee Amount as a Percent of Premarket Application Fee | FY 2007 Full Fee | FY 2007 Small Business Fee |
|---|---|---|---|
| PMA (submitted under section 515(c)(1) or 515(f) of the act or section 351 of the Public Health Service (PHS) Act) | | $281,600 | $107,008 |
| Premarket Report (submitted under section 515(c)(2) of the act) | 100% | $281,600 | $107,008 |
| Panel Track Supplement | 100% | $281,600 | $107,008 |
| Efficacy Supplement (to an approved premarket application under section 351 of the PHS Act) | 100% | $281,600 | $107,008 |
| 180-Day Supplement | 21.5% | $60,544 | $23,007 |
| Real Time Supplement | 7.2% | $20,275 | $7,705 |
| 510(k) | 1.42% in aggregate | $4,158 | $3,326 |

## III. Small Business Qualification for Purposes of MDUFMA Fees

Firms with annual gross sales or receipts of $30 million or less, including the gross sales and receipts of all affiliates, partners, and parent firms, may qualify for a fee waiver for their first PMA. Firms with annual gross sales or receipts of $100 million or less, including the gross sales and receipts of all affiliates, partners, and parent firms, may qualify for lower rates for all applications that are subject to a fee.

Even if a firm qualified under the act as a small business for MDUFMA fees in FY 2006, it must obtain a new small business certification and decision number for FY 2007 and for each subsequent FY. This can be initiated any time after the publication of this notice. A firm that does not have an FY 2007 small business qualification decision number from FDA will not be permitted to submit the reduced small business fees for applications submitted during FY 2007. FDA urges firms to apply for this qualification at least 60 days before they intend to submit their application and fee.

To qualify, you are required to submit the following:

(1) A completed FY 2007 Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, FY 2007 MDUFMA Small Business Qualification Worksheet and Certification, available on FDA's Web site at *http://www.fda.gov/cdrh/mdufma*. This form is not available separate from the guidance document.

(2) Certified copies of your Federal (U.S.) Income Tax Return for the most recent taxable year (2005 or later), and certified copies of the income tax returns of your affiliates, partners and parent firms.You can find information for determining if an applicant qualifies for a small business first-time PMA waiver and lower rates for subsequent applications on the FDA Web site at *http://www.fda.gov/cdrh/mdufma*. At that Web site, under the heading ''Guidance Documents,'' click on the link ''Qualifying as a Small Business.'' This Web site provides detailed instructions and the address for mailing documentation to support qualification as a small business under MDUFMA.

## IV. Procedures for Paying Application Fees

Any application or supplement subject to fees under MDUFMA that is received on or after October 1, 2006, through September 30, 2007, is subject to the FY 2007 fee rate. The later of the date that the application is received in the reviewing center's document room or the date that the check is received by US Bank determines whether the fee rates for FY 2006 or FY 2007 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

### *A. Step One—Secure a Payment Identification Number and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment. Note: FY 2007 fee rates will be available on the Cover Sheet Web Site beginning on September 5, 2007*

Log onto the MDUFMA Web site at *http://www.fda.gov/oc/mdufma* and, under the forms heading, click on the link ''User Fee Cover Sheet.'' Complete the Medical Device User Fee Cover Sheet. Be sure you choose the correct application submission date range. (Two choices will be offered from September 5 until October 1, 2006. One choice is for applications that will be received on or before September 30, 2006, which will be subject to FY 2006 fee rates. A second choice is for applications that will be received on or after October 1, 2006, which will be subject to FY 2007 fee rates.) After completing data entry, print a copy of the Medical Device User Fee Cover Sheet and note the unique Payment Identification Number located in the upper right-hand corner of the printed cover sheet.

### *B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet with the Payment Identification Number to FDA's Office of Financial Management*

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Since electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

*C. Step Three—Mail Payment and a Copy of the Completed Medical Device User Fee Cover Sheet to the St. Louis Address Specified Below*

• Make the payment in U.S. currency by check, bank draft, or U.S. Postal money order payable to the Food and Drug Administration. (The tax identification number of the Food and Drug Administration is 53–0196965, should your accounting department need this information.)

• Please write your application's unique Payment Identification Number, from the upper right-hand corner of your completed Medical Device User Fee Cover Sheet, on your check, bank draft, or U.S. Postal money order.

• Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO, 63195–6733.

If you prefer to send a check by a courier (such as FEDEX, DHL, UPS, etc.), the courier may deliver the check to: US Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, Missouri 63101.

(Note: This address is for courier delivery only. Contact the US Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following:

• The date the application was received by FDA.

• The date US Bank receives the payment. US Bank is required to notify FDA within 1 working day, using the Payment Identification Number described previously.

*D. Step Four—Submit your Application to FDA with a Copy of the Completed Medical Device User Fee Cover Sheet*

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses:

• Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.

• Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

Dated: July 26, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–12394 Filed 8–1–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[CGD13–06–034]**

### Announcement of Public Hearing Regarding the Interstate 5 Bridge Replacement Project Across the Columbia River Between Portland, OR and Vancouver, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Coast Guard will hold a public hearing to receive comments on the Interstate 5 Bridge Replacement Project, also known as the Columbia River Crossing Project, between Portland, Oregon and Vancouver, Washington. The dual vertical lift highway bridges across the Columbia River, mile 106.5, are being examined as candidates for replacement. Comments regarding impacts that the proposed bridge replacement project may have on navigation of the Columbia River and the environment will be of particular relevance to the Coast Guard's bridge permitting responsibilities.

**DATES:** This hearing will be held on Thursday, September 21, 2006, from 6 p.m. to 9 p.m., or later if necessary. Attendees at the hearing who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Written material and requests to make oral comment must be received by the Bridge Administrator at the address given under **ADDRESSES** on or before September 14, 2006.

**ADDRESSES:** The hearing will be held at the Red Lion Hotel on the River—Jantzen Beach, 909 North Hayden Drive, Portland, Oregon. The Timberline Room downstairs from the main lobby has been reserved. Send written material and requests to make oral comment to Mr. Austin Pratt, Bridge Administrator, Commander (dpw), Thirteenth Coast Guard District, 915 Second Avenue, Room 3510, Seattle, WA 98174–1067.

Commander (dpw) maintains the public docket and comments and material received from the public will become part of docket [CGD13–06–034] and will be available for inspection or copying at the above address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions regarding this notice or the proposed project, call Mr. Austin Pratt, Thirteenth Coast Guard District, Bridge Administrator, telephone (206) 220–7282.

**SUPPLEMENTARY INFORMATION:**

#### Proposed Action

The Interstate 5 Bridge Replacement Project under consideration will improve the mobility, reliability, and accessibility for automobile, freight, transit, bicycle, and pedestrian users of the Interstate 5 corridor from State Route 500 in Vancouver to Columbia Boulevard in Portland while meeting the reasonable needs of navigation. The existing Interstate 5 dual vertical lift highway bridges currently provide a 40-foot vertical clearance in the closed position. When raised, the lift spans increase the vertical clearance to 178.9 feet. Critical issues include the determination of the vertical clearance in a fixed span alternative as well as pier placement in the river. In addition to current navigational interests, existing conditions potentially impacting navigational clearances include the surrounding land uses, the Burlington Northern-Santa Fe rail line bridge (approximately one mile downstream), and the glide path requirements for Pearson Airpark in Vancouver and Portland International Airport in Portland. While the main focus of the hearing is to allow interested persons to present comments and information concerning the impact of the proposed bridge project on navigation and air space, comments concerning impacts on the human environment may also be presented and will be included in the public record.

The Federal Highway Administration and Federal Transit Administration are the joint lead Federal agencies for satisfying the requirements of Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), and the preparation of a Draft Environmental Impact Statement (DEIS) has commenced. The Coast Guard is a cooperating agency. This replacement bridge project will require a bridge permit from the Coast Guard (33 U.S.C. 525) and environmental review pursuant to NEPA.

#### Procedural

All interested parties will have an opportunity to be heard and to present evidence regarding the impacts of the proposed bridge project. Written statements and other exhibits in lieu of,

or in addition to, oral statements at the hearing must be submitted to the Bridge Administrator at the address listed under **ADDRESSES** on or before September 14, 2006, to be included in the Public Hearing transcript.

Comments, including names and home addresses, may be published as part of the Final EIS. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

**Information on Services for Individuals With Disabilities**

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander (dpw), Thirteenth Coast Guard District. Please request these services by contacting the Bridge Administrator at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES**. Any requests for an oral or sign language interpreter must be received as soon as possible.

Dated: July 14, 2006.

**N.E. Mpras,**

*Chief, Office of Bridge Administration, U.S. Coast Guard,*

[FR Doc. E6–12472 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Prepare a Comprehensive Conservation Plan for Ridgefield National Wildlife Refuge, and Notification of Two Public Open House Meetings

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of intent and notice of two public open house meetings.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan (CCP) for the Ridgefield National Wildlife Refuge (Refuge), and announces two public open house meetings. The Refuge is located in Clark County, Washington. The Service is furnishing this notice to: advise other agencies and the public of our intentions; and obtain suggestions and information on the scope of issues to include in the CCP and associated environmental compliance document.

**DATES:** Two public open house meetings will be held. The first open house is scheduled for Thursday, September 14, 2006, from 6 p.m. to 9 p.m. at the Ridgefield Community Center in Ridgefield, Washington (see **ADDRESSES**). The second open house is scheduled for Wednesday, September 20, 2006, from 6 p.m. to 9 p.m. at the Vancouver Public Library, in Vancouver, Washington (see **ADDRESSES**). Please provide written comments on the scope of the CCP by November 3, 2006. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the National Environmental Policy Act of 1969 as amended (NEPA), and Service and Department of the Interior policies and procedures.

**ADDRESSES:** Address comments, questions, and requests for further information to: Project Leader, Ridgefield National Wildlife Refuge Complex, P.O. Box 457, Ridgefield, WA 98642. Comments may be faxed to the Refuge at (360) 887–4109, or e-mailed to *FW1PlanningComments@fws.gov.* Additional information concerning the Refuge is available on the following Internet site: *http://www.fws.gov/ridgefieldrefuges/.* Addresses for the two public open house meeting locations follow.

1. Ridgefield Community Center, 210 North Main Avenue, Ridgefield, Washington 98642.

2. Vancouver Community Library, 1007 East Mill Plain Boulevard, Vancouver, Washington 98663.

**FOR FURTHER INFORMATION CONTACT:** Tim Bodeen, Project Leader, Ridgefield National Wildlife Refuge Complex, P.O. Box 457, Ridgefield, WA 98642, phone (360) 887–4106, and fax (360) 887–4109.

**SUPPLEMENTARY INFORMATION:** The Service is furnishing this notice in accordance with the National Wildlife Refuge System Administration Act of 1966 (the Act) as amended (16 U.S.C. 668dd–668ee), NEPA, and their implementing regulations in order to: advise other agencies and the public of our intentions; and obtain suggestions and information on the scope of issues to include in the CCP and associated NEPA document. Opportunities for public input will be announced throughout the CCP planning and development process. It is estimated that the draft CCP and NEPA document will be available for public review in May 2008.

By Federal law (the Act), all lands within the National Wildlife Refuge System will be managed in accordance with an approved CCP by 2012. A CCP guides a refuge's management decisions and identifies long-range refuge goals, objectives, and strategies for achieving the purposes for which the refuge was established. During the CCP planning process many elements will be considered, including: Wildlife and habitat management, public use opportunities, and cultural resource protection. Public input during the planning process is essential. The CCP for the Ridgefield Refuge will describe desired conditions for the Refuge and the long-term goals, objectives, and strategies for achieving those conditions. The Service will prepare an associated NEPA document in accordance with procedures for implementing NEPA.

The Refuge's approved boundary encompasses 6,170 acres of lower Columbia River bottomlands in Clark County, Washington; of this the Service owns approximately 5,217 acres. The Refuge was established in 1965 to provide habitat for wintering waterfowl, with an emphasis on dusky Canada geese after nesting areas in Alaska were severely impacted by the Great Alaska Earthquake of 1964.

Habitat types found on the Refuge include several subtypes of bottomland hardwood forest, managed pastures, old fields, croplands, bottomland (wet) prairies, Oregon white oak woodlands, western hemlock (mixed) forests, emergent marshes, open water marshes, and tidal riverine habitat. Populations of the endangered water howellia plant are found within the Refuge's Blackwater Research Natural Area.

The Refuge provides important migratory and wintering habitat for numerous bird species, including six subspecies of Canada geese, swans, dabbling and diving ducks, bald eagles, and sandhill cranes. The Refuge also contains one of the largest great blue heron colonies in the State, and provides breeding habitat for bald eagles and many species of neotropical migratory birds.

**Preliminary Issues, Concerns, and Opportunities**

The following preliminary issues, concerns, and opportunities have been identified and will be addressed in the CCP. Additional issues will be identified during public scoping.

*Habitat Management and Restoration:* What actions shall the Service take to sustain and restore priority species and habitats over the next 15 years?

*Public Use and Access:* What type and level of recreation opportunities should be provided? Are existing Refuge access points and uses adequate and appropriate? Which areas of the Refuge should be managed as undisturbed sanctuary areas and which areas should be open to public use? How will the recently completed Cathlapotle Plankhouse fit into interpretation and education programs on the Refuge?

*Invasive Species Control:* How do invasive species affect functioning native systems, and what actions should be taken to reduce the incidence and spread of invasive species?

*Cultural Resources:* How will the Refuge protect and manage its significant archaeological and historic sites? What level and type of cultural resources education should be provided to the public?

Dated: July 26, 2006.

**David J. Wesley,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. E6–12424 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Chiricahua Leopard Frog in Arizona (State-Wide)

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; receipt of application.

**SUMMARY:** The Arizona Game and Fish Department (AGFD) (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended. The requested permit, which is for a period of 50 years, would authorize incidental take of the threatened Chiricahua leopard frog (*Rana chiricahuensis*) as a result of conservation actions, on-going livestock operations, recreation, land treatments, and other existing land-use activities. The Applicant would issue certificates of inclusion under a Safe Harbor Agreement (SHA) to private landowners who would voluntarily agree to implement appropriate conservation measures for the species. We invite the public to review and comment on the permit application and the associated draft SHA.

**DATES:** To ensure consideration, written comments must be received on or before September 1, 2006.

**ADDRESSES:** Persons wishing to review the application, draft SHA, or other related documents may obtain a copy by written or telephone request to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 (602/242–0210). Electronic copies of these documents will also be available for review on the Arizona Ecological Services Office Web site, *http://www.fws.gov/arizonaes/*. The application and related documents will be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Phoenix office. Comments concerning the application, draft SHA, or other related documents should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Please refer to permit number TE–123062–0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Marty Tuegel at the U.S. Fish and Wildlife Service Tucson office, 201 N. Bonita Avenue, Suite 141, Tucson, Arizona 85745 (520/670–6150) ext. 232, or by e-mail at *Marty_Tuegel@fws.gov.*

**SUPPLEMENTARY INFORMATION:** The Applicant plans to implement a programmatic SHA that will enhance and maintain existing Chiricahua leopard frog habitat, create additional habitats, and reestablish populations of the species on the privately held lands of willing landowners within the historical range of Chiricahua leopard frog in Arizona (approximately 9,050 $mi^2$ [23,440 $km^2$] in portions of Apache, Cochise, Coconino, Gila, Graham, Greenlee, Navajo, Pima, Pinal, Santa Cruz, and Yavapai counties). Additionally, under this SHA, refugium and breeding facilities may be established on non-Federal lands in appropriate locations within Arizona. Chiricahua leopard frogs are native to the Mogollon Rim, White Mountains, and the Sky Island regions of southeastern and south-central Arizona. The SHA is expected to provide a net conservation benefit to the Chiricahua leopard frog.

The draft SHA and permit application are not eligible for categorical exclusion under the National Environmental Policy Act of 1969, based upon completion of a preliminary NEPA screening form. Due to the results of this preliminary analysis of potential effects, a draft Environmental Assessment has been prepared to further analyze the direct, indirect, and cumulative impacts of the SHA on the quality of the human environment or other natural resources.

Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

**Benjamin N. Tuggle,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. E6–12421 Filed 8–1–06; 8:45 am]

**BILLING CODE 4510–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

**AGENCY:** Bureau of Indians Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the current list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Evangeline M. Campbell, Indian Child Welfare Supervisory Social Worker,

Bureau of Indian Affairs, Human Service Division, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone: (202) 513–7623.

Dated: July 24, 2006.

**Michael D. Olsen,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

**Alaska Region**

Niles Cesar, Regional Director, Alaska Regional Office, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520; Telephone: (800) 645–8397; Fax: (907) 586–7252.

Gloria Kate Gorman, M.S.W., Human Services Director, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520; Telephone: (800) 645–8397 Ext. 2; Fax: (907) 586–7057.

**A**

Native Village of Afognak (formerly the Village of Afognak), Melissa Borton, Program Manager, 204 E. Rezanof, Suite 100, Kodiak, AK 99615; Telephone: (907) 486–6357; Fax: (907) 486–6529; E-mail: *melissa@afognak.org*.

Agdaagux Tribe of King Cove, David Eguia, Tribal Representative, P.O. Box 249, King Cove, AK 99612; Telephone: (907) 497–2648; Fax: (907) 497–2803.

Native Village of Akhiok, Randy Amodo, ICWA, P.O. Box 5054, Akhiok, AK 99615; Telephone: (907) 836–2220; Fax: (907) 836–2234; and Kathleen McInally, LCSW, Social Worker, Kodiak Area Native Association, 3449 E. Rezanof Drive, Kodiak, AK 99615; Telephone: (907) 486–9843; Fax: (907) 486–9886; E-mail: *kathleen.mcinally@kanaweb.org.*

Akiachak Native Community, Georgiann Wassilie, Tribal Family Services, ICWA Program, P.O. Box 51070, Akiachak AK 99551–0070; Telephone: (907) 825–4626 or 4073; Fax: (907) 825–4029 or 4075; E-mail: *yupiat@unicom-alaska.com.*

Akiak Native Community, Andrea Jasper, Social Services Director, Rhonda Andrews, ICWA Coordinator, P.O. Box 52127, Akiak, AK 99552; Telephone: (907) 765–7117 or 7112; Fax: (907) 765–7512 or 7120; E-mail: *akiaknc@unicom-alaska.com*.

Native Village of Akutan, Jacob Stepetin, Administrator, P.O. Box 89, Akutan, AK 99553; Telephone: (907) 698–2300; Fax (907) 698–2301; E-mail: *akutanaleuttribe@gci.net*; and Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Ave., Anchorage, AK 99501; Telephone: (907) 276–2700 or 222–4236; Fax: (907) 279–4351; E-mail: *graces@apiai.org.*

Village of Alakanuk, Charlene Smith, ICWA Worker, P.O. Box 149, Alakanuk AK 99554; Telephone: (907) 238–3704; Fax: (907) 238–3705; and Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559; Telephone: (907) 543–7366; Fax: (907) 543–5759.

Alatna Village, Tribal President and Tribal Administrator, P.O. Box 70, Allakaket, AK 99720; Telephone: (907) 968–2261; Fax: (907) 968–2305; and Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Telephone: (907) 452–8251 Ext. 3177; Fax: (907) 459–3953.

Native Village of Aleknagik, Jaclyn M. Alakayak, Tribal Children Service Worker, P.O. Box 115, Aleknagik, AK 99555; Telephone: (907) 842–4577; Fax: (907) 842–2229; E-mail: *alektrad@nushtel.com*; and Children's Services Program Manager, Bristol Bay Native Association, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576; Telephone: (907) 842–4139; Fax: (907) 842–4106; E-mail: *cnixon@bbna.com.*

Algaaciq Native Village (St. Mary's), Esther Tyson, ICWA Coordinator, P.O. Box 48, St. Mary's, AK 99658–0048; Telephone: (907) 438–2335; Fax: (907) 438–2227; and Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559; Telephone: (907) 543–7366; Fax: (907) 543–5759.

Allakaket Village, Tribal President and Tribal Administrator, P.O. Box 50, Allakaket, AK 99720; Telephone: (907) 968–2237; Fax: (907) 968–2233; E-mail: *wilmadavid@tananachiefs.org*; and Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Ambler, Mary J. Ramoth, ICWA Coordinator, Box 47, Ambler, AK 99786–0047; Telephone: (907) 445–2189; Fax: (907) 445–2181; E-mail: *mary.ramoth@ivisaappaat.org*

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Haines (see Chilkoot Indian Association).

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Kashunamiut Tribe (see Chevak).

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King Cove (see Agdaagux).

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Kluckwan (see Chilkat Indian Village).

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Kodiak Tribal Council (see Sun'aq Tribe of Kodiak, formerly Shoonaq Tribe).

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Louden (see Galena).

**M**

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Mountain Village (see Asa'carsarmiut Tribe).

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**Q**

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Quinhagak (see Kwinhagak).

Qissunamiut Tribe (see Chevak).

**R**

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Russian Mission (see Iqurmuit Traditional Council).

**S**

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**T**

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**F**

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**G**

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**H**

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**M**

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**O**

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**P**

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**R**

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**S**

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**U**

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**W**

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**K**

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**N**

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**E**

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**F**

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**H**

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**H**

Havasupai Tribe, Attention: Phyllis Jones, ICWA Coordinator, P.O. Box 10, Supai, Arizona 86435; Telephone: (928) 448–2731; Fax: (928) 448–2143.

Hopi Tribe of Arizona, Mrs. Eva Sekayumptewa, Supervisory Social Worker, Hopi Guidance Center Social Services, P.O. Box 68, Second Mesa, Arizona 86043; Telephone: (928) 737–2685.

Hualapai Tribe, Carrie Imus, Director, Hualapai Human Services, P.O. Box 480, Peach Springs, Arizona 86434; Telephone: (928) 769–2383 or 2269; Fax: (928) 769–2659.

**K**

Kaibab Band of Paiute Indians, Jenny Kalauli, Director, Social Services Program, HC 65 Box 2, Pipe Spring, Arizona 86022; Telephone: (928) 643–6010.

**L**

Las Vegas Paiute Tribe, Ron Pavelko, ICWA /Family Counselor, One Paiute Drive, Las Vegas, Nevada 89106; Telephone: (702) 382–0784.

Lovelock Paiute Tribal Council, Attention: Susan Calvin, Indian Child Welfare Coordinator, P.O. Box 878, Lovelock, Nevada 89419; Telephone: (775) 273–7861.

**M**

Moapa Band of Paiutes, Dalton Tom, Chairman, P.O. Box 340, Moapa, Nevada 89025; Telephone: (702) 865–2787; Fax: (702) 865–2875.

**P**

Paiute Indian Tribe of Utah, Attention: Mr. Allan Pauole, ICWA Caseworker, 440 North Paiute Drive, Cedar City, Utah 84720; Telephone: (435) 586–1112.

Pascua Yaqui Tribe, Office of the Attorney General, Tamara Walters, Assistant Attorney General, 4725 West Calle Tetakusim, Bldg. B, Tucson, Arizona 85757; Telephone: (520) 883–5108; Fax: (520) 883–5084.

Pyramid Lake Paiute Tribe, Chairperson, P.O. Box 256, Nixon, Nevada 89424; Telephone: (775) 574–1000.

**Q**

Quechan Tribal Council, President, P.O. Box 1899, Yuma, Arizona 85366–1899; Telephone: (760) 572–0213; Fax: (760) 572–2102.

**R**

Reno-Sparks Indian Colony, Attention: Director of Social Services, 98 Colony Road, Reno, Nevada 89502; Telephone: (775) 329–5071.

**S**

Salt River Pima-Maricopa Indian Community, Office of the General Counsel or Social Services Division, Child Protective Services, 10,005 East Osborn Road, Scottsdale, Arizona 85256; Telephone: (480) 850–4130.

San Carlos Apache Tribe, Mr. Marvin Mull, Jr., ICWA Coordinator, Tribal Social Services, P.O. Box 0, San Carlos, Arizona 85550; Telephone: (928) 475–2313 or 2314; Fax: (928) 475–2342.

San Juan Southern Paiute Tribe, Ms. Candelora Lehi, Tribal Enrollment Officer, Health and Human Services, P.O. Box 1169, Tuba City, Arizona 86045; Telephone: (928) 283–4587 or 4589; Fax: (928) 283–5531 or 5761.

Shoshone-Paiute Tribes of the Duck Valley Reservation (Nevada), Chairman, P.O. Box 219, Owyhee, Nevada 89832; Telephone: (208) 759–3100.

Skull Valley Band of Goshute Indians, Attention: ICWA Program Office, Metropolitan Plaza, Suite 110, 2480 S. Main Street, South Salt Lake City, Utah 84115; Telephone: (801) 474–0535.

South Fork Band Council, Karen McDade, Director, Social Services Program, 21 Lee, B13, Spring Creek, Nevada 89815; Telephone: (775) 744–2412.

Summit Lake Paiute Tribe, Attention: Tribal Chairperson, 653 Anderson Street, Winnemucca, Nevada 89445; Telephone: (775) 623–5151.

**T**

Te-Moak Tribe of Western Shoshone Indians, Maria Williams, ICWA, 37 Mountain View Drive, Battle Mountain, Nevada 89820; Telephone: (775) 635–9189 Ext. 109.

Tohono O'odham Nation, Office of Attorney General, P.O. Box 830, Sells, Arizona 85634; Telephone: (520) 383–3410.

Tonto Apache Tribe, Jerry Gramm, Social Services Director, Tonto Apache Reservation #30, Payson, Arizona 85541; Telephone: (928) 474–5000, Fax: (928) 474–9125.

**U**

Ute Indian Tribe, Floyd Wyasket, Social Service Director, Box 190, Fort Duchesne, Utah 84026; Telephone: (435) 725–4026 or (435) 823–0141.

**W**

Walker River Paiute Tribe, Sandra Hamilton, ICWA Specialist, P.O. Box 146, Schurz, Nevada 89427; Telephone: (775) 773–2058 or 2541; Fax: (775) 773–2096.

Washoe Tribe of Nevada and California, Social Services Director, 919 Hwy, 395 South, Gardnerville, Nevada 89410; Telephone: (775) 883–1446; E-mail: *washoetribe.us.*

Wells Indian Colony Band Council, Chairman, P.O. Box 809, Wells, Nevada 89835; Telephone: (775) 752–3045.

White Mountain Apache Tribe, Department of Social Services, Attention: Cynthia Burnett, Child

Welfare Administrator, P.O. Box 1870, Whiteriver, Arizona 85941; Telephone: (928) 338–4164, Fax: (928) 338–1469.

Winnemucca Tribe, Chairman, P.O. Box 1370, Winnemucca, Nevada 89446.

**Y**

Yavapai-Apache Nation, Frieda A. Eswonia, Director, ICWA Program Indian Child Welfare Act, Attention: Frieda A. Eswonia, Coordinator, 2400 Datsi Street, Camp Verde, Arizona 86322–8412; Telephone: (928) 567–9439 Ext. 21; Fax: (928) 567–6485; E-mail: *feswonia@yan-tribe.org.*

Yavapai-Prescott Indian Tribe, Attention: George Noriega, ICWA, 530 East Merritt Avenue, Prescott, Arizona 86301; Telephone: (928) 777–0532; Fax: (928) 541–7945.

Yerington Paiute Tribe, Wayne Garcia, Chairman, 171 Campbell Lane, Yerington, Nevada 89447; Telephone: (775) 463–3301.

Yomba Shoshone Tribe, Dennis J. Bill, Chairman, or Elisha Jim, Eligibility Worker, Social Services Program, HC 61 Box 6275, Austin, Nevada 89310–9301; Telephone: (775) 964–2463.

[FR Doc. E6–12484 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–921–06–1320–EL; COC 67514]**

### Notice of Federal Competitive Coal Lease Sale, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Competitive Coal Lease Sale, Lease Application COC 67514.

**SUMMARY:** Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM), Colorado State Office, will offer certain coal resources in the Wadge seam in Routt County, Colorado, hereinafter described as Federal coal lease application (LBA) COC 67514 for competitive lease by sealed bid in accordance with the provisions for competitive lease sales in 43 CFR 3422.2(a), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 11 a.m., Thursday, October 12, 2006. Sealed bids must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., Thursday, October 12, 2006. The cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state that the envelope contains a bid for Coal Lease Sale COC 67514, and is not to be opened before the date and hour of the sale.

**ADDRESSES:** The lease sale will be held in the BLM Colorado State Office, Conference Room, Fourth Floor, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted, hand delivered or mailed to the Cashier, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Contact Karen Zurek at BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215 or telephone 303–239–3795.

**SUPPLEMENTARY INFORMATION:** The coal resource to be offered consists of all recoverable coal reserves to be mined by underground mining methods in the following lands:

T. 5 N., R. 86 W., 6th P.M.
sec. 5, lot 4, SW¼NE¼, S½NW¼, and NW¼SE¼.

Containing approximately 200.36 acres in Routt County, Colorado.

Total recoverable reserves are estimated to be 2.1 million tons. The underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality on an as-received basis as follows:

WADGE SEAM

| BTU | 11,556 BTU/lb. (percent) |
|---|---|
| Volatile Matter | 37.00 |
| Fixed Carbon | 47.00 |
| Moisture | 9.74 |
| Sulfur Content | 0.41 |
| Ash Content | 7.78 |

The tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid meets the fair market value (FMV) for the tract as determined by the authorized officer after the Sale. The Department of the Interior has established a minimum bid of $100 per acre or fraction thereof for Federal coal tracts. The minimum bid is not intended to represent FMV. In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

*Rental and Royalty.* The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

*Notice of availability:* Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the Detailed Statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: June 30, 2006.

**Karen Zurek,**

*Solid Minerals Staff, Division of Energy, Lands and Minerals.*

[FR Doc. E6–12438 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–921–06 1320–EL; COC 70127]**

### Notice of Invitation for Coal Exploration License Application, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Invitation for Coal Exploration License Application, Bowie Resources, LLC, COC 70127, Colorado.

**SUMMARY:** Pursuant to the Mineral Leasing Act of February 25, 1920, as amended by Section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to Title 43, Code of Federal Regulations, Subpart 3410, all interested qualified parties, as provided in 43 CFR 3472.1 are hereby invited to participate with Bowie Resources, LLC, on a pro rata sharing basis in a program for the exploration of coal deposits owned by the United States of America containing the following described lands in Delta County, Colorado.

T. 12 S., R. 91 W., 6th P.M.
sec. 27, SWSW;
sec. 28, S2;
sec. 33, N2NE, and NENW;
sec. 34, NWNW.

The area described contains approximately 520 acres.

**DATES:** Written Notice of Intent to Participate in Exploration License COC 70127 should be addressed to the attention of the following persons and must be received by them by 30 days after publication of this Notice of Invitation in the **Federal Register**.

**ADDRESSES:** Karen Zurek, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Bowie Resources, LLC, P.O. Box 483, Paonia, Colorado 81428.

**FOR FURTHER INFORMATION CONTACT:** Karen Zurek at (303) 239–3795.

**SUPPLEMENTARY INFORMATION:** The application for coal exploration license is available for public inspection during normal business hours under serial number COC 70127 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The authority for this notice is 43 CFR 3410.2–1(c)(1).

**Karen Zurek,**

*Solid Minerals Staff, Division of Energy, Lands and Minerals.*

[FR Doc. E6–12440 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–040–06–1610–DT]**

### Notice of Correction to Notice of Availability of the Record of Decision for the Jack Morrow Hills Coordinated Activity Plan and Green River Resource Management Plan Amendment, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of correction.

**SUMMARY:** The Bureau of Land Management (BLM) inadvertently published an incorrect version of this notice in the **Federal Register** on July 20, 2006 [71 FR 41234]. The BLM is republishing the revised version of this notice.

In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Jack Morrow Hills Coordinated Activity Plan (JMH CAP) and Green River Resource Management Plan (GRRMP) Amendment. The ROD documents the BLM's decision to approve a land use plan amendment that addresses approximately 574,800 acres of public land located in Sweetwater, Sublette, and Fremont counties in southwestern Wyoming. The JMH CAP/GRRMP Amendment contains land use plan decisions that supersede previous land use planning decisions made in the GRRMP and completes decisions deferred in the GRRMP. The JMH CAP/ROD went into effect on the date the Wyoming State Director signed the ROD.

**ADDRESSES:** The ROD will be available electronically on the following Web site: *www.wy.blm.gov/jmhcap.*

Copies of the JMH CAP/ROD are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

To request a copy of the ROD, please write or telephone the BLM contacts listed below.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Holbert, Field Manager, or Renee Dana, JMH CAP Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Requests for a copy of the ROD may be sent electronically to: *rock_springs_wymail@blm.gov* with ''JMH CAP'' in the subject line. Mr. Holbert and Ms. Dana may be reached at (307) 352–0256.

**SUPPLEMENTARY INFORMATION:** The JMH CAP/ROD was developed with broad public participation through a 4-year collaborative planning process. The JMH CAP/ROD provides management direction designed to achieve or maintain desired future conditions developed through the planning process. To meet the desired resource conditions, the plan includes a series of management actions for resources in the area including upland and riparian vegetation, wildlife habitats, heritage and visual resources, air quality, sensitive species, special management areas, livestock grazing, minerals including oil and gas, and recreation.

In response to the 30-day protest period that ended on August 16, 2004, a total of 1,011 protests were received by BLM. The BLM reviewed and responded to all submittals.

The JMH CAP and ROD modify existing special management areas and establish new management objectives for other areas. The JMH planning area includes five Areas of Critical Environmental Concern (ACECs) previously designated under the Green River RMP. Four of the designated five ACECs remain unchanged. The fifth, Steamboat Mountain ACEC, has been expanded by about 4,000 acres and includes the Indian Gap trail and key habitats types such as the rare sagebrush/scurfpea vegetation type.

To protect important scientific values, the West Sand Dunes Archaeological District is identified as a new management area. The JMH CAP establishes the Steamboat Mountain Management Area where BLM will emphasize management of a portion of the public lands with important Native American cultural values, important watershed values, unique wildlife habitat, and crucial big game habitat.

The JMH CAP is essentially the same as the Proposed Plan in the JMH CAP/FEIS with some reorganization and clarifications as a result of the Governor's consistency review, public comments and protests. There are no significant changes from the Proposed JMH CAP/FEIS published in July, 2004.

No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the JMH CAP/FEIS. No significant changes or modifications were necessary as a result of comments or protests. As a result, only editorial modifications were made in the JMH CAP. These modifications correct and clarify errors that were noted during review of the JMH CAP/FEIS and provide further clarification for some of the decisions.

Dated: July 27, 2006.

**Donald A. Simpson,**

*Acting Associate State Director.*

[FR Doc. E6–12423 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–030–1430–EU; WIES–51706]**

### Notice of Realty Action: Modified Competitive Sale of Public Land in Langlade County, WI

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to sell a 1.18 acre parcel of land located in Langlade County, Wisconsin at not less than the appraised fair market value (FMV). The Bureau of Land Management-Eastern States (BLM–ES), Milwaukee Field Manager has determined the parcel will be offered for sale only to the current adjoining landowners under modified competitive sale procedures because the parcel has no legal access via a public road and is surrounded by private lands.

**DATES:** Comments regarding the proposed sale must be in writing and received by the Field Manager, BLM–ES, Milwaukee at the address below not later than September 18, 2006. Sealed bids must be received by BLM not later than 4:30 p.m. CDT, October 2, 2006.

**ADDRESSES:** BLM–ES, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202. Comments received in electronic form such as e-mail or facsimile will not be considered.

Address all sealed bids, marked as specified below, to the address above.

**FOR FURTHER INFORMATION CONTACT:** Marcia Sieckman at 414–297–4402 or BLM–ES, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202.

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of 43 CFR parts 2710 and 2720, the following described land is proposed to be sold pursuant to the authority provided in Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) as amended (43 U.S.C. 1713, 1719). The parcel to be sold is identified as suitable for disposal in the Wisconsin Resource Management Plan Amendment (2001).

Publication of this notice in the **Federal Register** shall segregate the lands described below from appropriation under the public land laws. The segregative effect of this notice shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or May 28, 2007, whichever occurs first.

**Fourth Principal Meridian**

T. 33 N., R. 10 E.,
Sec. 25, lot 17.
The area described contains 1.18 acres in Langlade County.

The appraised market value is $85,000. This parcel cannot be legally accessed by a public road. It is surrounded by private property and isolated from other Federal lands. There are no encumbrances reported on the records maintained by the BLM–ES, Milwaukee Field Office.

This parcel of land is being offered for sale through modified competitive bid procedures to the adjacent landowners who have repeatedly expressed an interest in acquiring the property. A modified competitive sale will protect the on-going uses of the parcel, assure compatibility of the future uses with adjacent lands, and allow the adjacent landowners an equal opportunity to successfully bid on the property. Bidding is only open to the following adjacent landowners (designated bidders): Martha Johnson and Jerrold and Barb Plamann.

Offers to purchase the parcel will be made by sealed bid only. All bids must be received at the BLM–ES, Milwaukee Field Office, Attention: Marcia Sieckman, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202, not later than 4:30 p.m. CDT, October 2, 2006.

Sealed bids will be opened to determine the high bid at 10 a.m. CDT, October 3, 2006 at the BLM–ES, Milwaukee Field Office.

Bids must be for not less than the appraised market value for the parcel, as reviewed and approved in advance of the sale by the BLM. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. currency to the Bureau of Land Management for an amount not less than 20 percent of the total amount of the bid. Personal checks will not be accepted.

The bid envelope also must contain a signed statement giving the total amount bid for the parcel and the bidder's name, mailing address, and phone number. As provided in the regulations at 43 CFR 2711.302(a)(1)(ii), bidders shall be designated by the BLM and limited to the adjoining landowners. Bids submitted by persons or entities other than the designated bidders will be rejected. If BLM receives two or more valid high bids offering an identical amount for the parcel, BLM will notify the apparent high bidders of further procedures to determine the highest qualifying bid.

The successful bidder will be allowed 180 days from the date of sale to submit the remainder of the full bid price. Failure to timely submit full payment shall result in forfeiture of the bid deposit to the BLM, and the parcel will be offered to the second highest qualifying bidder at their original bid. If there are no acceptable bids, the parcel may continue to be re-offered on a continuing basis in accordance with the competitive sale procedures described in 43 CFR 2711.3–1. Sealed bids, at not less than the appraised value, prepared and submitted in the manner described above will be accepted from any qualified bidder. Bids will be opened at 10 a.m. (local time), on the first Friday of each month until the offer is cancelled.

By law, public lands may be conveyed only to (1) Citizens of the United States who are 18 years old or older, (2) a corporation subject to the laws of any State or of the United States, (3) an entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Wisconsin, or (4) a State, State instrumentality, or political subdivision authorized to hold real property.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcel proposed for sale.

The Federal mineral interests underlying this parcel have no known mineral value and will be conveyed with the sale of the parcel. A sealed bid for the above described parcel constitutes an application for conveyance of those mineral interests. In addition to the full purchase price, a successful bidder must pay a separate nonrefundable filing fee of $50 for the mineral interests to be conveyed simultaneously with the sale of the land.

Detailed information concerning the proposed land sale, including sale procedures, terms of sale, proposed patent provisions, appraisals, planning and environmental documents, and the mineral report is available for review at the BLM–ES, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee Wisconsin 53202. Normal business hours are 7:30 a.m. to 4:30 p.m. CDT, Monday through Friday, except Federal holidays.

The general public and interested parties may submit written comments regarding the proposed sale to the Field Manager, BLM–ES, Milwaukee Field Office at the above address not later than September 18, 2006. Comments received during this process, including respondent's name, address, and other contact information, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, address, and other contact information (phone number, e-mail address, or fax number, etc.) from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your

comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by an individual in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

**Authority:** 43 Code of Federal Regulations 2711.1–2(a).

Dated: July 26, 2006.

**Michael D. Nedd,**

*State Director, Eastern States.*

[FR Doc. E6–12422 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–GJ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on May 25, 2006. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

**SUPPLEMENTARY INFORMATION:** Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 23, 2006, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 23, 2006, notice.

**Definitions of Abbreviations Used in This Document**

BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NMISC—New Mexico Interstate Stream Commission
O&M—Operation and Maintenance
P-SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act of 1956
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

*Modified contract action:*

16. Four irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of four irrigation

water service contracts for supplemental irrigation use of up to 6,018 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

*New Contract Actions*

42. Cawelo WD, CVP, California: Long-term Warren Act contract for conveying nonproject water for a non-CVP contractor.

43. Elk Creek Community Services District, CVP, California: Renewal of long-term water service contract for up to 100 acre-feet for a period of 25 years.

*Completed Contract Action*

23. Sacramento River Settlement Contracts, CVP, California: Five contracts remain to be executed out of a total of 145 contracts and one contract with Colusa Drain Mutual Water Company; water quantities for these contracts total 2.2M acre-feet. These contracts will be renewed for a period of 40 years. The contracts reflect agreements to settle disputes over water rights' claims on the Sacramento River and the Colusa Basin Drain. Contracts executed February 22, 2006; March 28, 2006; April 7, 2006; April 10, 2006; and May 8, 2006.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8081.

*New Contract Action*

41. City of Needles and The Metropolitan WD of Southern California, Lower Colorado Water Supply Project, California: Contract for acquisition and delivery of Lower Colorado Water Supply Project water.

*Completed Contract Actions*

24. Tohono O'odham Nation, CAP, Arizona: Amend CAP water delivery contract pursuant to the Arizona Water Settlements Act, Pub. L. 108–451, enacted December 10, 2004. Contract executed May 5, 2006.

40. The Metropolitan WD of Southern California, BCP, California: Contract to implement a demonstration program to create intentionally created surplus through extraordinary conservation in 2006 and 2007 and store this water in Lake Mead. Contract executed May 26, 2006.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

*New Contract Action*

33. North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado: North Fork and Ragged Mountain have requested a contract for supplemental water from the Paonia Project. This contract is for municipal uses.

*Completed Contract Action*

1.(f) GW Spore Family Minor Subdivision, Aspinall Storage Unit, CRSP: GW Spore has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. They have submitted their augmentation plan to Water District 4, case No. 05 CW 220. Contract executed March 22, 2006.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

*New Contract Actions*

47. City of Grand Junction, City of Fruita, and Town of Palisade (Municipal Recreation Agreement); Colorado-Big Thompson Project; Colorado: Negotiation of renewal of Municipal Recreation Agreement to provide historic users pool surplus water from Green Mountain Reservoir for nonconsumptive municipal recreation uses.

48. Colorado River Water Conservation District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a second round water sales or repayment contract from the regulatory capacity of Ruedi Reservoir for up to 5,000 acre-feet annually for M&I uses and also providing water to the endangered fish and supplementing in-stream flows.

*Modified Contract Actions*

19. Clark Canyon Water Supply Company, East Bench Unit, P–SMBP, Montana: Negotiating renewal of contract No. 14–06–600–3592 which was amended to expire December 31, 2006. Current contract may be amended again to extend the term not to exceed an additional 1 year pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

20. East Bench ID, East Bench Unit, P–SMBP, Montana: Negotiating renewal of contract No. 14–06–600–3593 which was amended to expire December 31, 2006. Current contract may be amended again to extend the term not to exceed an additional 1 year pursuant to Section 208 of the 2005 Consolidated Appropriations Act if necessary and agreed to by both parties.

*Completed Contract Action*

40. Mark H. Allredge, H.S. Properties LLC (Individual); Boysen Unit, P–SMBP; Wyoming: Renewal of long-term water service contract for up to 84 acre-feet of supplemental irrigation water to serve 84 acres. Contract executed March 24, 2006.

Dated: June 30, 2006.

**Roseann Gonzales,**

*Director, Office of Program and Policy Services.*

[FR Doc. E6–12418 Filed 8–1–06; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Michael P. Trinski and Arrow Marine, Inc.*, Case No. 05 C 0197, was lodged with the United States District Court for the Northern District of Illinois on July 19, 2006. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403 (''RHA''), to obtain injunctive relief from and impose civil penalties against the Defendants for installing a boat ramp and associated structures in the Fox River Chain-O-Lakes without a permit.

The proposed Consent Decree requires either removal of the ramp and associated structures or the purchase and abandonment of another ramp on Fox Lake or Pistakee Lake. The Consent Decree also requires payment of a civil penalty, and donation of real property to the Fox Waterway Agency.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Michael P. Trinski and Arrow Marine, Inc.*, Case No. 05 C 0197, including the USAO # 2004V00910.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be

viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

**Kurt N. Lindland,**

*Assistant United States Attorney.*

[FR Doc. 06–6647 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Employee Possessor Questionnaire [OMB Number 1140–0072]

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 104, pages 30959–30960 on May 31, 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 September 1, 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:* Employee Possessor Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.28. 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: Business or other for-profit. Abstract: Each employee possessor in the explosive business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. The form will be submitted to ATF to determine whether the person who provided the information is qualified to be an employee possessor in an explosive business.

(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 10,000 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3,334 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 28, 2006.

**Lynn Bryant,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. E6–12450 Filed 8–1–06; 8:45 am]

**BILLING CODE 4810–FY–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Termination of Judgments

Notice is hereby given that Defendant American Watch Association, Inc. (''AWA'') and Defendant Foote, Cone & Belding, Inc. (''Foote'') have filed a joint motion to terminate both the Final Judgment entered against the AWA (''the AWA Final Judgment'') and the Final Judgment entered against Foote (''the Foote Final Judgment'') on March 9, 1960 in *United States* v. *The Watchmakers of Switzerland Information Center, Inc.,* Trade Reg. Rep. (CCH) ¶69,655 (S.D.N.Y. Mar 9, 1960) (collectively ''the AWA and Foote Final Judgments'') and that the Department of Justice (''the Department''), Antitrust Division, in a stipulation also filed with the Court, has tentatively consented to termination of the AWA and Foote Final Judgments, but has reserved the right to withdraw its consent pending receipt of public comments.

The AWA and Foote Final Judgments, similar to the Final Judgment entered in *United States* v. *The Watchmakers of Switzerland Information Center, Inc.,* Trade Reg. Rep. (CCH) ¶69,655 (S.D.N.Y. Mar. 9, 1960) (''the Watchmakers Final Judgment''), arose out of a 1950s investigation of the anticompetitive practices of the Swiss watch industry, including Swiss watch manufacturers, Swiss trade associations, and their United States importers. The United States filed a complaint against more than 20 watch companies and associations in 1954, including the AWA and Foote. *United States* v. *The Watchmakers of Switzerland Information Center, Inc.,* Civil Action No. 96–170 (S.D.N.Y. Complaint filed Oct. 19, 1954). The AWA is an association that promotes the growth and health of the U.S. watch industry and lobbies to influence regulatory policy. Its members include U.S. watch companies as well as U.S. subsidiaries of foreign watch manufacturers. Foote is an advertising agency that allegedly acted as an agent for some of the defendants.

The United States made serveral allegations in its complaint. It charged that certain Swiss and U.S.

manufacturers and sellers of Swiss watches and watch parts engaged in a conspiracy ''to restrict, eliminate and discourage the manufacture of watches and watch parts in the United States, and to restrain United States imports and exports of watches and watch parts for manufacturing and repair purposes.'' *Id.* The United States also charged that these companies agreed to fix minimum prices for watches and maximum prices for repair parts, regulate the use and distribution of watches and repair parts, boycott those who violated these restrictions. *Id.* The conspiracy came about through the adoption and enforcement of an agreement known as the Collective Convention of the Swiss Watch Industry. ''The purpose of the Collective Convention was to protect, develop and stablize the Swiss watch industry and to impede the growth and competitive watch industries outside of Switzerland.'' *United States* v. *The Watchmakers of Switzerland Information Center, Inc.,* 1963–1 Trade Cas. (CCH) ¶70,600, at 77,426 (S.D.N.Y. Dec. 20, 1962).

The AWA was named as a defendant because, as a trade association whose members included most of the defendant manufacturers and importers, there was concern that the AWA could aid the alleged conspiracy by policing members' conduct and influencing members to participate in the cartel.

Foote was named as a defendant in the Complaint, becuase as an advertising agency and an agent for some of the defendants, there was concern that Foote, similar to the AWA, was policing the alleged conspiracy and thus aiding the defendants in the enforcement of the cartel.

On March 9, 1960, prior to trial, the United States and the defendant importers (not the AWA since it is a trade association, nor Foote since it is an advertising agency) named in the complaint agreed to enter into the Watchmakers Final Judgment in lieu of going to trial. *United States* v. *The Watchmakers of Switzerland Information Center, Inc.,* Trade Reg. Rep. (CCH) ¶69,655 (S.D.N.Y. Mar. 9, 1960). Also on March 9, 1960, the United States and Defendants AWA and Foote agreed to enter into the AWA Final Judgment and the Foote Final Judgment, respectively, in lieu of going to trial. *Id.* Most of the restrictions in the AWA and Foote Final Judgments prohibit conduct that each company, respectively, could have taken to facilitate the conspiracy.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the AWA and Foote Final Judgments would serve the public interest. Copies of the AWA's and Foote's joint motion to terminate, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with the AWA's and Foote's joint motion will be available for inspection at the Antitrust Documents Group, Antitrust Division, Room 215, 325 7th Street, NW., Washington, DC 20004, and at the Office of the Clerk of the United States District Court for the Southern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department regulations.

Interested persons may submit comments regarding the proposed termination of the AWA and Foote Final Judgments to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

**Dorothy B. Fountain,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. 06–6625 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 20, 2006 and published in the **Federal Register** on March 24, 2006, (71 FR 14948), Cerilliant API Services LLC, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II; and by letter to modify its name to Austin Pharma LLC. Subsequent to the publication of the Notice of Application, by letter, the company has also requested to withdraw thirty-five drug codes from their initial application request.

| Drug | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Alphamethadol (9605) | I |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Levo-alphacetylmethadol (9648) | II |
| Alfentanil (9737) | II |
| Remifentanil (9739) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant API Services LLC to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant API Services LLC to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 26, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–12478 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 22, 2006, Clariant LSM (Missouri) Inc., 2460 W. Bennett Street, or (P.O. Box 1246, zip 65801), Springfield, Missouri 65807–1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of

controlled substances listed in Schedules II:

| Drug | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Phenylacetone (8501) | II |
| Methadone intermediate (9254) | II |

The company plans to manufacture the listed controlled substance in bulk for sale to its customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC. 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 2, 2006.

Dated: July 26, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–12455 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 27, 2006, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of basic drug code (1724) methylphenidate.

The company plans to bulk manufacture methylphenidate for a customer to use in the production of a controlled substance product.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC. 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 2, 2006.

Dated: July 26, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–12457 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 19, 2006, Orasure Technologies, Inc., Lehigh University, Seeley G. Mudd-Building 6, Bethlehem, Pennsylvania 18015, made application by renewal, and by letter, to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I and II:

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (LSD) (7315). | I |
| 4–Methoxyamphetamine (7411) | I |
| Normorphine (9313) | I |
| Tetrahydrocannabinols (THC) (7370). | I |
| Alphamethadol (9605) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Cocaine (9041) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Oxycodone (9143) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Oxymorphone (9652) | II |

The company plans to manufacture the listed controlled substances in bulk to manufacture controlled substance derivatives. These derivatives will be used in diagnostic products created specifically for internal use only.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR § 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC. 20537, Attention: DEA **Federal Register** Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 2, 2006.

Dated: July 26, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–12459 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 10, 2006, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the

issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 2, 2006.

July 26, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6–12475 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Bureau of Justice Assistance; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** 30 Day Notice of Information Collection Under Review: Extension of a currently approved collection.

Bureau of Justice Assistance Application Form: *Southwest Border Prosecution Initiative [OMB Number 1121–0270].*

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 collection information 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 104, pages 30962–30963 on May 31, 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 September 1, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Bureau of Justice Assistance Application Form for the Southwest Border Prosecution Initiative.

(3) *The agency form number, if any and the applicable component of the Department sponsoring the collection:* None.

(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 Southwest Border Prosecutor Initiative was enacted in FY 2002 to reimburse state, county, parish, or municipal governments for the costs associated with the prosecution of criminal cases declined by local U.S. Attorneys. Each year, hundreds of criminal cases resulting from federal arrests are referred to local prosecutors to handle when the cases fall below certain monetary, quantity, or severity thresholds. This places additional burdens on local government resources that are already stretched by the demands of prosecuting violations of local and state laws. This program provides funds to eligible jurisdictions in the four southwest border states, using a uniform payment-per-case basis for qualifying federally initiated and declined-referred criminal cases that were disposed of after October 1, 2001. Up to 220 eligible jurisdictions may apply. This includes county governments and the four state governments in Arizona, California, New Mexico, and Texas.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 220 respondents will apply. Each application takes approximately 60 minutes to complete and is submitted 4 times per year (quarterly).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 880 hours (880 applications (220 × 4 times a year) × 60 minutes per application = 52,800/60 minutes per hour = 880 burden hours).

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC, 20530, or via phone at 202–514–4304.

Dated: July 28, 2006.

**Lynn Bryant,**

*Department Clearance Officer, Justice Management Division, PRA, United States Department of Justice.*

[FR Doc. E6–12454 Filed 8–1–06; 8:45 am]

**BILLING CODE 4410–18–P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby

informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision;

2. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities;

3. *The form number if applicable:* N/A;

4. *How often the collection is required:* On occasion, when a State wishes to observe NRC inspections or perform inspections for NRC;

5. *Who will be required or asked to report:* Those States interested in observing or performing inspections;

6. *An estimate of the number of annual responses:* 154 (50 nuclear facility + 104 materials security licensees);

7. *The estimated number of annual respondents:* 66 (50 nuclear facility + 16 materials security licensees);

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,540 hours (10 hours per response);

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A;

10. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities or conduct materials security inspections against NRC Orders are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program, as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities and Section 274i of the atomic Energy Act, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 1, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 25th day of July, 2006.

For the Nuclear Regulatory Commission.

**Brenda Jo Shelton,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E6–12444 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–188]**

### Kansas State University; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Kansas State University Nuclear Reactor Facility License No. R–88 for an Additional 20-Year Period

The Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. R–88, which authorizes the Kansas State University (KSU) (the licensee) to operate the TRIGA Mark II Nuclear Reactor Facility at 1,250 kilowatts thermal power. The renewed license would authorize the applicant to operate the KSU Research Reactor for an additional 20 years beyond the period specified in the current license. The current license for the KSU Research Reactor expired on October 16, 2002.

On September 12, 2002, as supplemented on December 22, 2004, July 6, 2005, March 20 and March 30, 2006, the Commission's staff received an application from KSU filed pursuant to 10 CFR 50.51(a), to renew Facility License No. R–88 for the KSU Research Reactor. A Notice of Receipt and Availability of the license renewal application, ''Notice of License Renewal Application for Facility Operating License; Kansas State University,'' was published in the **Federal Register** on October 11, 2002 (67 FR 63457). Because the license renewal application was timely filed under 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that KSU has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50–188 for Facility License No. R–88, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within sixty (60) days after the date of publication of this Federal Register Notice, the applicant may file a request for a hearing, 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 with respect to the renewal of the license. 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 Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agency Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr.* Persons who do not have access to the NRC Web site or who encounter problems in accessing the documents located in the Electronic Reading Room should contact the NRC's PDR reference staff at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.* If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, 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. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 50

and 51, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with the particular interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) 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 requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the KSU Research Reactor license renewal application.

2. *Environmental*—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

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. 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 must 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 licensee. The licensee's contact for this is Mr. P. Michael Whaley, Nuclear Reactor Manager, Kansas State University, 112 Ward Hall, Manhattan, KS 66506–2506.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission's PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML042430055 for part one and ML042430048 for part two. Copies of the application to renew the facility license for the KSU Research Reactor are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738. The initial application also may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS accession number ML022630083. The revised application may be accessed under ADAMS accession numbers ML052620181, ML061010264, and ML061640340. Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of July, 2006.

For the Nuclear Regulatory Commission.

**Brian E. Thomas,**

*Chief, Research and Test Reactor Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–12465 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–150]**

### The Ohio State University Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of the Ohio State University Research Reactor Facility License No. R–75 for an Additional 20-Year Period

The Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Facility License No. R–75, which authorizes the Ohio State University (OSU) (the licensee) to operate the Ohio State University Research Reactor (OSURR) at 500 kilowatts thermal power. The renewed license would authorize the applicant to operate the OSURR for an additional 20-years beyond the period specified in the current license. The current license for the OSURR expired on February 3, 2000.

On December 15, 1999, and supplemented on August 21, 2002, the Commission's staff received an application from OSU filed pursuant to 10 CFR Part 50.51(a), to renew Facility License No. R–75 for the OSURR. Because the license renewal application was filed in a timely manner in accordance with 10 CFR 2.109, the license will not be deemed to have expired until the license renewal application has been finally determined.

The Commission's staff has determined that OSU has submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 that the application is acceptable for docketing. The current Docket No. 50–150 for Facility License No. R–75, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Within thirty (30) days after the date of publication of this **Federal Register** Notice, the applicant may file a request for a hearing, 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 with respect to the renewal of the license. 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 Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agency Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr*. Persons who do not have access to the NRC web site or who encounter problems in accessing the documents located in the Electronic Reading Room should contact the NRC's PDR reference staff at 1–800–397–4209, or by email at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 30-day period, 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. In the event that no request for a hearing or petition for leave to intervene is filed within the 30-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 50 and 51, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with the particular interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) 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 requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the OSURR license renewal application.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

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

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

participate fully in the conduct of the hearing. 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 must 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 licensee. The licensee's contact for this is Dr. William A. Baeslack, III, Dean, College of Engineering, 142A Hitchcock Hall, The Ohio State University, 2070 Neil Avenue, Columbus, OH 43210.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in the document NUREG–1537, entitled ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' can be obtained from the Commission?s PDR. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The detailed review guidance (NUREG–1537) may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML042430055 for part one and ML042430048 for part two. Copies of the application to renew the facility license for the OSURR are available for public inspection at the Commission?s PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738. The initial application also may be accessed through the NRC's Public Electronic Reading Room, at the address mentioned above, under ADAMS accession number ML053400287 (Redacted Version). Persons who do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of June 2006.

For the Nuclear Regulatory Commission.

**Brian E. Thomas,**

*Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–12439 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## 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, NJ.

The proposed amendments would revise the Technical Specifications (TSs) to delete Surveillance Requirement (SR) 4.9.2.b, which requires performance of a channel functional test (CFT) of each source range neutron flux monitor within 8 hours prior to the initial start of core alterations. An associated administrative change would renumber current SR 4.9.2.c as SR 4.9.2.b. The amendments would also eliminate the restriction in SRs 4.10.3.2 and 4.10.4.2 that the CFTs of the intermediate and power range monitors be performed within 12 hours prior to initiating physics tests. The amendments would also make changes to TS Table 4.3–1 to make the SRs on the above instruments better aligned with NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' and with Technical Specification Task Force Traveler 108, ''Eliminate the 12 hour [Channel Operational Test] on power range and intermediate range channels for Physics Test Exceptions.'' Specifically, the frequency of the CFTs for the intermediate range, source range, and power range monitors would be changed to be more consistent with NUREG–1431.

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 amendments 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 changes do not affect the design, operational characteristics, function, or reliability of the source range, intermediate range, or power range monitors. A *channel functional test* for the source range, intermediate range, or power range monitors will continue to be performed at a frequency that has been determined to be sufficient for verification that the monitors are properly functioning. The proposed changes eliminate extraneous and unnecessary performance of a *channel functional test* for the source range, intermediate range, or power range monitors. A *channel functional test* for the source range, intermediate range, or power range monitors is not a precursor to, or assumed to be an initiator of any analyzed accident. Therefore, these proposed changes do not involve a significant increase in the probability of an accident.

The consequences of accidents previously evaluated in the Updated Final Safety Analysis Report are unaffected by the proposed changes because no change to any

equipment response or accident mitigation scenario has resulted. 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 or transient. Because the source range, intermediate range, and power range monitors will remain capable of performing their design function, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not 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 design or function is being modified, and no significant changes in operations are being introduced. No new equipment performance burdens are imposed.

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 ability of operators to monitor the reactor power level during all operating conditions and modes of operation with the source range, intermediate range, or power range monitors is unchanged by these proposed changes. 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.

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 O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for 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'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 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 email 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 December 7, 2005, and the supplement dated July 20, 2006, which are available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of July 2006.

For the Nuclear Regulatory Commission.

**Stewart N. Bailey,**

*Senior Project Manager, Plant Licensing Branch 1–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–12442 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–2]**

### Notice of Issuance of Decommissioning Amendment for University of Michigan Ford Nuclear Reactor

The U.S. Nuclear Regulatory Commission (NRC) is noticing the approval of the University of Michigan decommissioning plan (DP) by amendment to the Facility Operating License for the Ford Nuclear Reactor (FNR).

The FNR is located in the Phoenix Memorial Laboratory on the North Campus of the University in Ann Arbor, Michigan. The reactor was licensed to operate at 2 Megawatt thermal power. After the initial startup of the FNR in 1957, the reactor ceased operations on July 3, 2003.

The licensee submitted the FNR DP to the NRC for review and approval in a letter dated June 8, 2004, as supplemented on June 23, 2004, January 5, 2006 and January 10, 2006. The NRC approved the DP by Amendment No. 50 to the FNR Operating License No. R–28 on June 22, 2006.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Michigan Ford Nuclear Reactor'' was published in the **Federal Register** on September 8, 2004 (69 FR 54326–54327) and in The Ann Arbor News on September 9, 2004. On June 7, 2006, the NRC staff consulted with the Environmental Coordinator for the City of Ann Arbor, Michigan. No comments were received.

A copy of the license amendment approving the University of Michigan's proposed decommissioning plan is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The amendment may be accessed electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML061220260. Persons who do not have access to ADAMS, or have problems in accessing the documents located in ADAMS, may contact the NRC PDR Reference staff by phone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this June 30, 2006.

For the Nuclear Regulatory Commission.

**Brian E. Thomas,**

*Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–12441 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–157 and 50–97]**

### Notice of Issuance of Decommissioning Amendments for Cornell University Triga Research Reactor (TRIGA) and Cornell University Zero Power Reactor (ZPR)

The Nuclear Regulatory Commission (NRC) has approved the Cornell University Ward Center for Nuclear Studies (WCNS) decommissioning plan (DP) by amendments to the Facility Operating Licenses for the TRIGA

Research Reactor and the Zero Power Reactor (ZPR).

The WCNS is located on the Cornell University campus in Ithaca, New York. The WCNS was constructed between 1959 and 1962 to house the TRIGA, the ZPR, and supporting systems. The TRIGA Reactor ceased operations on April 21, 2003. The ZPR ceased operations in 1996.

The licensee submitted the WCNS DP to the NRC for review and approval in a letter dated August 22, 2003, as supplemented on May 13, September 27, October 26 and December 13, 2005, and February 13, 2006. The NRC approved the DP by Amendment No. 14 to the TRIGA Facility Operating License No. R–80 on June 15, 2006 and Amendment No. 8 to the ZPR Facility Operating License No. R–89 on June 6, 2006.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission WCNS at Cornell University Reactor Facility'' was published in the **Federal Register** on August 10, 2005 (70 FR 46549). No comments were received.

Copies of the license amendments approving Cornell University's proposed decommissioning plan are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The amendments may be accessed electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML061030501 and ML061030405. Persons who do not have access to ADAMS, or have problems in accessing the documents located in ADAMS, may contact the NRC PDR Reference staff by phone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15 day of June, 2006.

For the Nuclear Regulatory Commission.

**Brian E. Thomas,**

*Branch Chief, Research and Test Reactors Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–12462 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8907]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for United Nuclear Corporation, Church Rock, NM

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** Paul Michalak, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 415–7612; fax number: (301) 415–5955; e-mail: *pxm2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) proposes to issue a license amendment for License Condition 35 (ground water protection standards), to Materials License SUA–1475, for the United Nuclear Corporation (UNC), Church Rock, New Mexico uranium mill site (the Site). The purpose of this amendment is to revise the current chloroform ground water protection standard of 0.001 milligrams per liter (mg/L) to 0.08 mg/L for total trihalomethanes (THMs), and revise the current combined radium-226 and -228 GWPS from 5 pCi/L to 5.2 pCi/L in the Southwest Alluvium and from 5 pci/L to 9.4 pCi/L in Zone 1.

### II. EA Summary

The staff has prepared an environmental assessment (EA) in support of the proposed license amendment. Since this action relates to ground water, the primary focus of the evaluation of potential environmental impacts relates to ground water. Ground water is not used as a potable source at, or in, the immediate vicinity of the Site. The closest down-gradient public-use well is about 2,700 meters (8,860 feet) to the northeast. With the exception of the historical mill and mine activity, land use is primarily grazing for sheep, cattle and horses. The area around the Site is sparsely populated and includes Indian Tribal Land as well as UNC-owned property. The primary use of the Indian Tribal Land is grazing. The proposed total THMs ground water protection standard of 0.08 mg/L is one established by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act, and it represents a thoroughly examined and evaluated maximum allowable drinking water concentration that is considered to be safe by the EPA. With respect to the proposed combined radium-226 and 228 standards, both the proposed standard of 5.2 pCi/L in the Southwest Alluvium and 9.4 pCi/L in Zone 1 represent the 95th percentile background concentrations in their respective saturated units. They were both derived from a large data set collected over a 16 year period and are both below the New Mexico Ground Water Protection Standard of 30 pCi/L.

### III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

### IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are as follows:

| Document | ADAMS accession No. | Date |
|---|---|---|
| License Amendment Request for Changing the Chloroform Ground Water Protection Standard in Source Materials License SUA–1475. | ML052310151 | May 26, 2005. |
| Revised License Amendment Request for Changing the Chloroform Ground Water Protection Standard in Source Materials License SUA–1475. | ML052100367 | July 14, 2005. |
| License Amendment Request for Changing the Method of Determining Exceedances of the Combined Radium Groundwater Protection Standard in Source Materials License No. SUA–1475. | ML053010019 | September 30, 2005. |
| Summary of January 18, 2006 public meeting between NRC and UNC | ML060200298 | January 23, 2006. |

| Document | ADAMS accession No. | Date |
|---|---|---|
| Revised License Amendment Request for Changing the Method of Determining Exceedances of the Combined Radium Groundwater Protection Standard in Source Materials License SUA–1475. | ML060730043 | February 22, 2006. |
| Revised License Amendment Request for Changing the Method of Determining Exceedances of the Combined Radium Groundwater Protection Standard in Source Materials License SUA–1475. | ML061220286 | April 7, 2006. |
| Environmental Assessment of License Amendment Request for Changing Ground Water Protection Standards in Source Materials License SUA–1475. | ML061870630 | July 21, 2006. |

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 800–397–4209, 301–415–4737, or by e-mail, to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 26th day of July, 2006.

For The Nuclear Regulatory Commission.

**Paul Michalak,**

*Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–12445 Filed 8–1–06; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Vocational Report; OMB 3220–0141. Section 2 of the Railroad Retirement Act (RRA) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicants ''regular occupation'' or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, *Vocational Report*, to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

Completion is required to obtain or retain a benefit. One response is requested of each respondent. The RRB proposes no changes to Form G–251. The completion time for Form G–251 is estimated at between 30 and 40 minutes per response. The RRB estimates that approximately 6,000 Form G–251's are completed annually.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. E6–12431 Filed 8–1–06; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 71 FR 42888, July 28, 2006.

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** August 1, 2006 at 2 p.m.

**CHANGE IN THE MEETINGS:** Date and Time Change.

The Closed Meeting scheduled for Tuesday, August 1, 2006 at 2 p.m., has been changed to Friday, August 4, 2006 at 2 p.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 31, 2006.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06–6669 Filed 7–31–06; 3:52 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54224; File No. 4–523]**

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between NYSE Arca, Inc. and the National Association of Securities Dealers, Inc.

July 27, 2006.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on January 20, 2006, NYSE Arca, Inc.[3] (''NYSE Arca'') and the National Association of Securities Dealers, Inc. (''NASD'')

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] NYSE Arca, Inc. was formerly called the Pacific Exchange, Inc. (''PCX''). On March 6, 2006, PCX filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the PCX, as well as several other related entities, to reflect Archipelago Holdings, Inc.'s (''Archipelago'') recent acquisition of PCX and the merger of the New York Stock Exchange, Inc. with Archipelago. *See* Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006).

(together with the NYSE Arca, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'') an amended and restated plan for the allocation of regulatory responsibilities. On July 25, 2006, the Parties submitted a revised amended and restated plan. The Commission is publishing this notice to solicit comments on the revised amended and restated 17d–2 plan from interested persons.

## I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or registered securities association 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)[5] or 19(g)(2)[6] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[7] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[8] With respect to a common member, 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 and Rule 17d–2 under the Act.[9] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[10] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[11] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their 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 the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. Proposed Plan

The Parties currently operate pursuant to a 17d–2 plan in which the NASD assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the ''current NASD–PCX 17d–2 Plan'').[12] On September 22, 2005, the Commission approved a proposed rule change submitted by PCX, the predecessor to NYSE Arca,[13] relating to the acquisition of PCX Holdings, Inc. by Archipelago.[14] In that filing, PCX committed to amend the current NASD–PCX 17d–2 Plan within 90 days of the Commission's approval of SR–PCX–2005–90 to expand the scope of the NASD's regulatory functions under the plan so as to encompass all of the regulatory oversight and enforcement responsibilities with respect to the broker-dealer affiliate of Archipelago, Archipelago Securities, L.L.C.[15] This time period has been extended three times.[16]

On January 20, 2006, the Parties submitted an amended and restated 17d–2 plan for review and approval by the Commission. On July 25, 2006, the Parties submitted a revised amended and restated plan. The revised amended and restated plan is intended to replace and supersede the current NASD–PCX 17d–2 Plan and all prior amendments thereto in their entirety. The revised amended and restated 17d–2 plan is intended to reduce regulatory duplication for firms that are common members of NYSE Arca and the NASD. The text of the plan delineates regulatory responsibilities with respect to the Parties, including responsibility for NYSE Arca rules. Included in the revised amended and restated plan is an attachment (''NYSE Arca Rules Certification for 17d–2 Agreement with NASD,'' referred to herein as the ''Certification'') that lists every NYSE Arca rule and the federal securities laws and rules and regulations thereunder for which, under the plan, the NASD would bear responsibility for overseeing and enforcing with respect to common members. In particular, under the revised amended and restated 17d–2 plan, the NASD would assume examination and enforcement responsibility relating to compliance by dual members and persons associated therewith with the rules of NYSE Arca that are substantially similar to the rules

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d).

[6] 15 U.S.C. 78s(g)(2).

[7] 15 U.S.C. 78q(d)(1).

[8] *See* Securities Act 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).

[9] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[10] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

[11] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[12] *See* Securities Exchange Act Release Nos. 14095 (October 25, 1977), 42 FR 57198 (November 1, 1977) (File No. 4–267) (notice of 1977 Agreement); 15191 (September 26, 1978), 43 FR 46093 (October 5, 1978) (File No. 4–267) (order granting temporary approval); 15722 (April 12, 1979), 44 FR 23616 (April 20, 1979) (File No. 4–267) (extension of time to file amendments); 15941 (June 21, 1979) (File No. 4–267), SEC Docket, Vol. 17, no. 14, page 995 (July 3, 1979) (further extension of time to file required amendments); 16462 (January 2, 1980), 45 FR 2121 (January 10, 1980) (File No. 4–267) (order granting temporary approval); 16591 (February 20, 1980), 45 FR 12573 (February 26, 1980) (File No. 4–267) (notice of 1980 Amendment); 16719 (April 2, 1980), 45 FR 23841 (April 8, 1980) (File No. 4–267) (order granting temporary approval); and 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (File No. 4–267) (approval order).

[13] *See supra* note 3.

[14] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (approving SR–PCX–2005–90, as amended).

[15] Archipelago Securities acts as the outbound order router for the NYSE Arca Marketplace (formerly, the Archipelago Exchange, or ArcaEx), the equities trading facility of NYSE Arca.

[16] *See* Securities Exchange Act Release Nos. 52995 (December 21, 2005), 70 FR 77232 (December 29, 2005); 53545 (March 23, 2006), 71 FR 16183 (March 30, 2006); and 54046 (June 26, 2006), 71 FR 37965 (July 3, 2006).

of the NASD (''Common Rules''), as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification.[17] Under the plan, NYSE Arca would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving NYSE Arca's own marketplace; registration pursuant to its unique rules (*i.e.*, non-common rules); its duties as a Designated Examining Authority pursuant to Rule 17d–1 under the Act; and any rules that are not substantially similar to the rules of the NASD, except for NYSE Arca rules for any broke-dealer subsidiary of Archipelago.[18]

The text of the revised amended and restated 17d–2 plan is as follows:

*Agreement Between the NASD and NYSA Arca, Inc. Pursuant to Sec Rule 17d–2 Under the Securities Exchange Act of 1934*

This Agreement, between the National Association of Securities Dealers, Inc. (''NASD'') and the NYSE Arca, Inc. (''NYSE Arca''), is made this 25th day of July, 2006, pursuant to the provisions of SEC Rule 17d–2 under the Securities Exchange Act of 1934 which calls for agreements between self-regulatory organizations for plans to reduce or eliminate regulatory duplication.

This Agreement supersedes and replaces Agreements entered into between the parties on May 27, 1977 and January 20, 2006, entitled ''Agreement Between the National Association of Securities Dealers, Inc. and the Pacific Stock Exchange, Inc. Pursuant to SEC Rule 17d–2 Under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

*Whereas*, NASD and NYSE Arca are desirous of reducing duplication in the examination of their dual members (a broker-dealer firm which is a member of both NASD and NYSE Arca) and in the filing and processing of certain registration and membership records; and

*Whereas*, NASD and NYSE Arca are desirous of executing a plan covering such subjects pursuant to the provisions of Rule 17d–2 and filing such with the Commission for its approval.

*Now, therefore*, in consideration of the mutual covenants contained hereafter, the said NASD and NYSE Arca hereby agree as follows:

1. That NASD will assume regulatory responsibilities for all firms who are members of NYSE Arca and NASD (''dual members''). NYSE Arca shall furnish NASD with a current list of dual members, which shall be updated no less frequently than once each quarter.

2. For purposes of this plan, the term ''regulatory responsibilities'' shall mean the examination and enforcement responsibility relating to compliance by the dual members and persons associated therewith with the rules of NYSE Arca that are substantially similar to the rules of NASD in that the NYSE Arca's rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member's activity, conduct, or output in relation to such rule, (the ''Common Rules''). Prior to the effective date of this Agreement, NYSE Arca shall furnish NASD with a current list of Common Rules (''Certification''), and NASD will confirm in writing whether the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the commencement of operation of this Agreement, or more frequently if required by changes in either the rules of NYSE Arca or NASD, NYSE Arca shall submit an updated list of Common Rules to NASD for review which shall add NYSE Arca rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete NYSE Arca rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be NYSE Arca rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, NASD will confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Regulatory responsibilities under this Agreement shall also extend to those provisions of the federal securities laws and rules and regulations thereunder listed in the Certification.

The term ''enforcement responsibility'' shall mean the conduct of appropriate proceedings, in accordance with the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the NASD's Code of Procedure and sanctions guidelines. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''regulatory responsibilities'' does not include, and NYSE Arca will retain full responsibility for (unless otherwise addressed by separate agreement or rule):

(a) Surveillance and enforcement with respect to trading activities or practices involving NYSE Arca's own marketplace, including without limitation NYSE Arca's rules relating to the rights and obligations of market makers;

(b) Registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Act; and

(d) Any rules of NYSE Arca that are not substantially similar to the rules of NASD, except for NYSE Arca rules for any broker-dealer subsidiary of Archipelago Holdings, Inc. as provided in paragraph 5.

3. There shall be no charge to NYSE Arca by NASD for performing the stated regulatory responsibilities under this plan except as hereinafter provided. NASD will provide NYSE Arca with ninety (90) days advance written notice in the event NASD decides to impose any charges to NYSE Arca for performing the stated regulatory responsibilities under this plan. If it becomes necessary to impose a charge, NYSE Arca shall have the right at the time of the imposition of such to terminate this Agreement; provided, however, that NASD's regulatory responsibilities under this Agreement shall continue until the SEC approves the termination of this Agreement.

4. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Securities and Exchange Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning regulatory responsibilities between self-regulatory organizations. To the extent such is inconsistent with this Agreement, such shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

5. Should NASD become aware of apparent violations of NYSE Arca's rules, which are not listed as Common Rules, discovered pursuant to the performance of the regulatory

[17] *See* paragraph 2 of the revised amended and restated 17d–2 plan. The Commission notes that there is only one federal security law rule on the Certification, Rule 200 of Regulation SHO.

[18] *See id.* Apparent violations of such NYSE Arca rules by any broker-dealer subsidiary of Archipelago will be processed by, and enforcement proceedings will be conducted by, the NASD. *See* paragraph 5 of the revised amended and restated 17d–2 plan.

responsibilities assumed hereunder, NASD will notify NYSE Arca of those apparent violations. With respect to apparent violations of any NYSE Arca rules by any broker-dealer subsidiary of NYSE Arca's parent company, Archipelago Holdings, Inc., NASD shall not make referrals to NYSE Arca pursuant to this Item 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, NASD as provided in this agreement. Apparent violations of all other applicable rules, including violations of the various securities acts, and rules and regulations thereunder, will be processed by, and enforcement proceedings in respect thereto will be conducted by NASD as provided hereinbefore; provided however that in the event a covered dual member or a person associated therewith is the subject of an investigation relating to a transaction on NYSE Arca, NYSE Arca may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

6. NASD will make available to NYSE Arca all information obtained by it in the performance by it of the regulatory responsibilities hereunder in respect to the firms which are subject to this Agreement. In particular, and not in limitation of the foregoing, NASD will furnish NYSE Arca any information it obtains about dual members which reflects adversely on their financial condition and which should be known by NYSE Arca or any subsidiaries thereof. It is understood that such information is of an extremely sensitive nature and, accordingly, NYSE Arca agrees to take all reasonable steps to maintain its confidentiality. NYSE Arca will supply NASD any information coming to its attention that reflects adversely on the financial condition of dual members or indicates possible violations of applicable laws, rules or regulations by such firms.

7. Dual members subject to this agreement will be required to submit, and NASD will be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both NYSE Arca and NASD or associated with dual members thereof. NASD shall advise NYSE Arca monthly of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both NYSE Arca and NASD. Dual members will be required to send to NASD all letters, termination notices or other material respecting these individuals. When as a result of processing said submissions NASD becomes aware of a statutory disqualification as defined in the Securities Exchange Act of 1934 with respect to a dual member or person associated with a dual member, NASD will determine pursuant to sections 15A(g) and/or section 6(c) the acceptability or continued applicability of the person to whom such disqualification applies and keep NYSE Arca advised of its actions in this regard.

NASD will also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by dual members and any other applications required of dual members under the Common Rules as they may be amended from time to time. NASD will advise NYSE Arca monthly of the opening, address change and termination of branch and main offices of dual members and the names of such branch office managers.

8. NYSE Arca shall forward to NASD copies of all customer complaints involving dual members and persons associated therewith received by it relating to NASD's regulatory responsibilities under this Agreement. It shall be NASD's responsibility to review and take appropriate action in respect to such complaints.

9. NASD shall assume responsibility to review the advertising of dual members subject to the Agreement, provided that such material is filed with NASD in accordance with NASD's filing procedures and is accompanied with any applicable filing fees. Such review will be made in accordance with then applicable NASD rules and interpretations. In all cases of dual members subject to this Agreement, the advertising of dual members shall be subject only to compliance with appropriate NASD rules and interpretations.

10. Nothing contained in this Agreement shall restrict or in any way encumber the right of NASD or NYSE Arca to conduct special or cause examinations of dual members and persons associated therewith as NASD or NYSE Arca, in their sole discretions, shall deem appropriate.

11. NYSE Arca recognizes that, pursuant to this Agreement, NASD will maintain an available and appropriate mechanism for considering and acting upon requests by dual members for extensions of time pursuant to Federal Reserve Regulation T and SEC Rule 15c3–3 of the Securities Exchange Act of 1934. NASD will keep NYSE Arca informed with respect to its activities in granting extensions of time pursuant to Regulation T and Rule 15c3–3 to dual members in such form and content as reasonably determined by NASD.

12. Should a dispute arise between the parties as to the operation of this Agreement, NYSE Arca and NASD agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

13. This Agreement may be cancelled by NYSE Arca or NASD at any time with the approval of the Securities and Exchange Commission upon one (1) year's written notice, except as provided in paragraph 3.

14. This Agreement shall be effective upon approval of the Securities and Exchange Commission.

15. This Agreement is wholly separate from the multiparty Agreement made pursuant to SEC Rule 17d–2 of the Securities Exchange Act of 1934 between the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on January 14, 2004, and as may be amended from time to time.

Limitation of Liability

Neither NASD nor NYSE Arca nor any of their respective directors, governors, officers or employees shall be liable to the other party to this plan for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of regulatory responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of NASD or NYSE Arca and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made

by NASD or NYSE Arca with respect to any of the responsibilities to be performed by each of them hereunder.

Relief From Responsibility

Pursuant to Sections 17(d)(1)(A) and 19(g) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, NASD and NYSE Arca join in requesting the Commission, upon its approval of this plan or any part thereof, to relieve NYSE Arca of any and all responsibilities with respect to matters allocated to NASD pursuant to this plan.

*NYSE Arca Certification*

NYSE Arca Rules Certification for 17d–2 Agreement With NASD

NYSE Arca, Inc. hereby certifies that the requirements contained in the rules listed below for NYSE Arca Equities, Inc., a wholly-owned subsidiary, are identical to, or substantially similar to, comparable NASD rules (''Common Rules'') as of July 2006.[19]

| Rule | Description |
|---|---|
| 2.15 ..... | Responsibilities of Non-Resident Firms. |
| 2.21 ..... | Employees of ETP Holder Registration. |
| 2.24 ..... | ETP Books and Records. |
| 6.1 ..... | Adherence to Law. |
| 6.2 ..... | Prohibited Acts. |
| 6.6 ..... | Front-Running of Block Transactions. |
| 6.13 ..... | Disciplinary Action By Other Organizations. |
| 6.15 ..... | Miscellaneous Prohibitions. |
| 6.16 ..... | Trading Ahead of Customer Limit Orders. |
| 6.17 ..... | Anti-Money Laundering Compliance Program. |
| 6.18 ..... | Supervision. |
| 8.4 ..... | Account Approval. |
| 8.5 ..... | Suitability. |
| 8.6 ..... | Discretionary Accounts. |
| 8.7 ..... | Supervision of Accounts. |
| 8.8 ..... | Customer Complaints. |
| 8.9 ..... | Prior Approval of Certain Communications to Customers. |
| 9.1(a) ... | Register with the Corporation. |
| 9.1(c) ... | Office Supervision. |
| 9.1(d) ... | Designation of Firm Principal. |
| 9.1(e) ... | Guarantees. |
| 9.1(f) .... | Sharing Profits—Losses. |
| 9.2(b) ... | Account Supervision. |
| 9.2(c) ... | Customer Records. |
| 9.3(a) ... | Employee Accounts. |
| 9.3(b) ... | ETP Holder and Allied Person Accounts. |
| 9.4 ..... | Proxies Voting. |
| 9.5 ..... | Solicitation Expense. |
| 9.6(a) ... | Discretion as to Customers' Accounts. |
| 9.6(b) ... | Records of Discretionary Accounts. |
| 9.7(a) ... | Pledging Customer Securities. |
| 9.7(b) ... | Use of Customer Securities. |
| 9.7(c) ... | Customer Protection—Reserves and Custody of Securities. |
| 9.7(d) ... | Agreements for Use of Customer Securities. |
| 9.10 ..... | Assuming Losses. |
| 9.11 ..... | Confirmations. |
| 9.12 ..... | COD Orders—Partial Delivery. |
| 9.13 ..... | Long Sales. |
| 9.14 ..... | Account Designation. |
| 9.15 ..... | Statements of Account to Customers. |
| 9.17 ..... | Books and Records. |
| 9.19 ..... | Transfer of Accounts. |
| 9.20(b) | Telemarketing. |
| 9.21(a) | Policy. |
| 9.22(a) | Advertisements. |
| 9.23 ..... | Sales Literature—Market Letters. |
| 9.24 ..... | Radio, Television, Telephone and Other Reports. |
| 9.25 ..... | Standards. |
| 9.27 ..... | Registration of Representatives. |
| 9.27 ..... | Regulatory Element. |
| 9.29 ..... | Borrowing From or Lending to Customers. |

In addition, the following provisions of the Securities Exchange Act of 1934, and rules and regulations thereunder, shall be part of this 17d–2 Agreement: Rule 200 of Regulation SHO-Definition of ''Short Sale'' and Marking Requirements.

## III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act[20] and Rule 17d–2 thereunder,[21] after August 23, 2006, the Commission may, by written notice, declare the plan submitted by NYSE Arca and the NASD, File No. 4–523, effective if the Commission finds 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, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

## IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the revised amended and restated 17d–2 plan and to relieve NYSE Arca of the responsibilities which would be assigned to the NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–523 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–523. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the plan 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 4–523 and should be submitted on or before August 23, 2006.

[19] The Commission notes that the Certification attached to the executed revised amended and restated plan also includes references to the NASD rules to which the Common Rules are identical or substantially similar. Further, the Certification notes that, with respect to several of the NYSE Arca rules, NYSE Arca will be responsible for any significant differences between its rule and the comparable NASD rule identified, until such time amendments to such rule(s) may be approved. A copy of the revised amended and restated plan, including the Certification, is available on the Commission's Web site at *http://www.sec.gov*.

[20] 15 U.S.C. 78q(d)(1).

[21] 17 CFR 240.17d–2.

[22] 17 CFR 200.30–3(a)(34).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–12429 Filed 8–1–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No.34–54222; File No. SR–CHX–2006–21]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

July 26, 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 11, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CHX. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to clarify monthly applicability of the Exchange's Self-Regulatory Organization Fee (''SRO Fee''). The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com/rules/proposed_rules.htm*), at the principal office of the Exchange, and in 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, CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX 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

Through this proposal, the Exchange seeks to clarify monthly applicability of the Exchange's SRO Fee. The Exchange's Fee Schedule has for many years contained a provision establishing an SRO Fee of $100. Prior to the Exchange's demutualization in February of 2005, this provision of the Fee Schedule indicated that the SRO Fee was ''$100 per member and member organization per month.''

In connection with the demutualization rule changes, this provision was modified to delete the ''per month'' reference. Despite the deletion of the ''per month'' reference, the Exchange did not intend to modify its long-standing practice of assessing the SRO Fee on a monthly basis. Indeed, since the provision was modified in February of 2005, the Exchange has consistently billed each CHX participant for the $100 SRO Fee on a monthly basis and the Exchange intends to continue this monthly assessment. To eliminate any confusion, however, the Exchange is submitting this proposed rule change to the Fee Schedule to reincorporate the ''per month'' language.

2. Statutory Basis

CHX believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CHX 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed 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–CHX–2006–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2006–21. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of CHX. 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–CHX–2006–21 and should be submitted on or before August 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–12428 Filed 8–1–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54221; File No. SR–NASDAQ–2006–005]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Modify Nasdaq's Delisting Procedures To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

July 26, 2006.

### I. Introduction

On April 4, 2006, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Nasdaq delisting procedures to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On May 5, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On May 17, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 15, 2006.[5] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

### II. Description of the Proposed Rule Change

Section 12 of the Act[6] and Rule 12d2–2 thereunder[7] (''SEC Rule 12d2–2'') govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2–2 (''amended SEC Rule 12d2–2'') and other Commission rules require the electronic filing of revised Form 25 on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.[8]

Nasdaq proposes to revise Nasdaq Rules 4480, 4804, 4805, 4806, 4807, 4808, 4809, and adopt Interpretative Material 4800 (''IM 4800'') with respect to delisting procedural requirements as mandated by amended SEC Rule 12d2–2.

In the case of exchange-initiated delistings, amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the exchange's board of directors; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2–2(d)(1), and must remain posted on its Web site until the delisting is effective.

Nasdaq's rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by the Nasdaq's board of directors.[9] Nasdaq proposes to adopt IM 4800 to incorporate the requirements of amended SEC Rule 12d2–2. Proposed IM 4800 sets forth the procedures Nasdaq would follow to remove a security from listing. Under proposed IM 4800, Nasdaq would provide public notice of its final determination to remove a security from listing by issuing a press release and posting a notice on its Web site. Nasdaq would disseminate the public notice no fewer than 10 days before the delisting becomes effective. The public notice would remain on Nasdaq's Web site until the delisting is effective. After the public notice, Nasdaq would file a Form 25 with the Commission and would promptly provide a copy of such form to the issuer.

With respect to issuer-initiated delisting procedures, Nasdaq proposes to amend Nasdaq Rule 4480[10] to require the issuer to:

(i) Comply with all requirements of amended SEC Rule 12d2–2(c);

(ii) Comply with all applicable laws in effect in the state in which it is incorporated and with applicable Nasdaq rules;

(iii) Provide notice to Nasdaq no fewer than 10 days before the issuer files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting;

(iv) Contemporaneous with providing notice to Nasdaq, publish notice of its intent to delist, along with its reasons, via a press release and on its Web site, if it has one (any notice provided on the Web site must remain available until the delisting is effective); and

(v) Provide a copy of the Form 25 to Nasdaq simultaneously with the filing of the Form 25 with the Commission.

Nasdaq would provide notice on its Web site of the issuer's intent to delist as required by amended SEC Rule 12d2–2(c)(3).

Nasdaq also proposes that an issuer seeking to voluntarily delist a class of securities that has received notice from Nasdaq that the issuer fails to comply with one or more requirements for continued listing, or is aware that it is below such continued listing requirements notwithstanding that it has not received such notice, must disclose this fact (including the specific continued listing requirements that it is below) in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to Nasdaq, along with written notice of its

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] In Amendment No. 2, Nasdaq amended the implementation date of the proposed rule change to the later of Commission approval or the date Nasdaq begins to operate as a national securities exchange.

[5] *See* Securities Exchange Act Release No. 53964 (June 8, 2006), 71 FR 34656.

[6] 15 U.S.C. 78*l*.

[7] 17 CFR 240.12d2–2.

[8] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[9] *See* Nasdaq Rules 4803(a), 4805, 4806, 4807, 4808, and 4809.

[10] Nasdaq proposes to renumber Nasdaq Rule 4480 to Nasdaq Rule 4380.

determination to withdraw from listing required by amended SEC Rule 12d2–2(c)(2)(ii) and (ii) its press release and Web site notice required by amended SEC Rule 12d2–2(c)(2)(iii).

In addition, Nasdaq proposes to amend Nasdaq Rule 4809 with respect to the Nasdaq board of directors' discretionary review of delisting decision by the Nasdaq Listing Council. Nasdaq proposes to allow its board of directors to withdraw the call for review of a Listing Council decision at any time prior to the issuance of a decision. Further, if the Nasdaq board of directors has conducted a discretionary review of the Listing Council decision, the decision of the Nasdaq board of directors will take immediate effect, unless specified to the contrary.

Finally, Nasdaq proposes to amend Nasdaq Rules 4804(e), 4806(e), and 4807(f) to provide that Nasdaq will follow the proposed delisting procedures in IM–4800.

## III. Discussion

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[11] and, in particular, the requirements of Section 6 of the Act.[12] Specifically, as discussed below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, in part, that the rules of an exchange be 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, and processing information with respect to, and 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. Further, as noted in more detail below, the changes being adopted by Nasdaq meet the requirements of amended SEC Rule 12d2–2.

### *A. Exchange Delisting*

Amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that Nasdaq's current rules and procedures comply with the dictates of amended SEC Rule 12d2–2(b).

Nasdaq rules currently provide the requisite issuer notice as well as an opportunity for appeal to a committee designated by Nasdaq's Board.[14] Specifically, issuers may appeal Nasdaq staff determinations to the Listing Qualifications Panel, which is a panel composed of at least two persons designated by the Nasdaq Board.[15] Adverse decisions by the Listing Qualifications Panel may be appealed to the Listing Council.[16] In addition, the Nasdaq Board may in its discretion call any Listing Council decision for review.[17] Finally, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[18]

### *B. Issuer Voluntary Delisting*

In the case of an issuer-initiated delisting, Nasdaq proposes to amend Nasdaq Rule 4380 and IM 4800 to require the issuer to:

(i) Comply with applicable Exchange Rules and applicable state laws in which it is incorporated;

(ii) Provide notice to Nasdaq, no fewer than 10 days before the issuer files the Form 25, including a statement of the material facts relating to the reasons for delisting (effectively, the notice to Nasdaq will be provided at least 20 days before the delisting becomes effective); and

(iii) Contemporaneous with providing notice to Nasdaq, publish notice of its intent to delist, along with its reasons, via a press release and on its Web site.

The Commission also notes that Nasdaq will, as required by amended SEC Rule 12d2–2(c)(3), post notice of issuer-initiated delistings on Nasdaq's Web site beginning on the next business day following receipt of notice from the issuer, and Nasdaq will keep the notice posted until the delisting becomes effective. The Commission believes that the amendment will better inform issuers of the requirements for voluntary delisting of their securities under Nasdaq rules and Federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2–2 that would require the issuer to notify Nasdaq that it has filed a Form 25 with the Commission contemporaneously with such filing. The Commission believes that this requirement will allow Nasdaq to be fully informed of the filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form 25.

In addition, Nasdaq proposes that an issuer seeking to voluntarily delist a class of securities that has received a notice from Nasdaq that the issuer fails to comply with one or more requirements for continued listing, or that the issuer is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from Nasdaq, must disclose this fact, including the specific continued listing requirements that it is below, in: (i) Its statement of all material facts relating to the reasons for withdrawal from listing provided to Nasdaq along with written notice of the issuer's determination to withdraw from listing required by amended SEC Rule 12d2–2(c)(2)(ii) and (ii) its press release and Web site notice required by amended SEC Rule 12d2–2(c)(2)(iii). The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Nasdaq continued listing requirements and is voluntarily delisting. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Nasdaq continued listing requirements.

### *C. Implementation*

The Commission notes that Nasdaq will implement this proposal when it becomes a national securities exchange. This will ensure that the new procedures will be in place when Nasdaq begins operating as a national securities exchange, as required by amended SEC Rule 12d2–2.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Nasdaq–2006–005), as amended, is approved.

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[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Nasdaq Rules 4804 (Written Notice of Staff Determination) and 4805 (Request for Hearing).

[15] *See* Nasdaq Rules 4801(h) and 4806 (The Listing Qualifications Panel).

[16] *See* Nasdaq Rule 4806(b).

[17] *See* Nasdaq Rule 4807(e).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–12430 Filed 8–1–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54217; File No. SR–NASD–2006–011)**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Principal Pre-Use Approval of Member Correspondence to 25 or More Existing Retail Customers Within a 30 Calendar-Day Period

July 26, 2006.

### I. Introduction

On January 27, 2006, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 2211 (''Institutional Sales Material and Correspondence'') to require principal pre-use approval of member correspondence to 25 or more existing retail customers within a 30 calendar-day period. On February 13, 2006, NASD filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 28, 2006.[3] The Commission received five comments on the proposal, as amended.[4] On June 29, 2006, NASD submitted a response to the comments[5] and filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended.

### II. Description of the Proposed Rule Change

In 2003, as part of NASD's modernization of its advertising rules, the SEC approved the adoption of NASD Rule 2211, which included an amended definition of ''correspondence.''[7] The definition of correspondence includes any written letter or electronic mail message distributed by a member to one or more of its existing retail customers and to fewer than 25 prospective retail customers within a 30 calendar-day period.[8] Previously, ''correspondence'' included any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

The definition of correspondence is significant in several respects. Firms generally are not required to have a registered principal approve correspondence prior to use, nor are they required to file correspondence with the NASD Advertising Regulation Department (''Department'').[9] In addition, correspondence is subject to fewer content restrictions than advertisements and sales literature. NASD noted that it amended the definition in order to provide firms with more flexibility regarding the supervision of certain emails and form letters. NASD further noted, however, that it understands that many firms continue to require registered principal pre-use approval of some correspondence.

*Proposed Amendment*

NASD indicated that it has found that some member correspondence to multiple existing customers raises the same regulatory concerns as member advertisements and sales literature. However, members are not currently required to have such correspondence approved by a principal prior to use or to file it with the Department. As a result, NASD is proposing to amend Rule 2211 to require registered principal pre-use approval of any non-clerical correspondence[10] sent to 25 or more existing retail customers within any 30 calendar-day period. NASD stated that non-clerical correspondence with such a wide distribution often will constitute a solicitation to purchase or sell a security or to use a brokerage service.

NASD is not proposing to require that this correspondence be filed with the Department or that it be subject to all of the content standards of the advertising rules. A firm may, however, choose to file this correspondence with the Department to better ensure that it complies with applicable standards, particularly when the correspondence promotes the firm's products or services.

NASD indicated that it will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 30 days following Commission approval. The effective date will be 90 days following publication of the *Notice to Members* announcing Commission approval.

### III. Summary of Comments and NASD's Response

As noted above, the Commission received five comments on the proposal,[11] to which NASD has filed a response letter.[12] Two commenters supported the proposal, without reservation.[13] One of these commenters, in expressing its ''unqualified support'' for the proposal, noted that the proposal is consistent with recently-announced NASD communications policies, as well as the policies of other self-regulatory organizations, and that the proposal gives firms discretion with regard to their internal supervisory procedures ''without sacrificing customer

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53333 (February 17, 2006), 71 FR 10090.

[4] *See* comment letters to Nancy M. Morris, Secretary, Commission, from Caroline B. Austin, CEO, Evolve Securities, Inc., dated March 7, 2006 (''Evolve Letter''); Dorothy M. Donohue, Associate Counsel, Investment Company Institute, dated March 17, 2006 (''ICI Letter''); Tim Kelly, Partner, Field Supervision, Edward D. Jones & Co., LP, dated March 20, 2006 (''Edward D. Jones Letter''); Jack R. Handy, Jr., President and CEO, Financial Network Investment Corporation, dated March 21, 2006 (''FNIC Letter''); and Dale E. Brown, CAE, Executive Director & CEO, Financial Services Institute, dated March 21, 2006 (''FSI Letter'').

[5] *See* letter from Philip A. Shaikun, Associate Vice President and Associate General Counsel, NASD, to Katherine England, Assistant Director, Division, Commission, dated June 29, 2006 (''NASD Response Letter'').

[6] Amendment No. 2 made clarifying changes to the proposed rule text, thus it is a technical amendment and is not subject to notice and comment.

[7] *See* Securities Exchange Act Release No. 47820 (May 9, 2003), 68 FR 27116 (May 19, 2003).

[8] NASD has clarified that, for purposes of its rules governing member communications with the public, it views instant messaging in the same manner in which it views traditional electronic mail messages. Accordingly, instant messaging may qualify as correspondence or sales literature, depending upon the facts and circumstances. *See Notice to Members* 03–33 (July 2003).

[9] NASD Rule 3010(d)(2) requires each member to develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing correspondence with the public relating to its investment banking or securities business. Where such procedures do not require review of all correspondence prior to use or distribution, they must provide for the education and training of associated persons as to the firm's procedures governing correspondence, documentation of the education and training, and surveillance and follow-up to ensure that the procedures are implemented and adhered to.

[10] In Amendment No. 2, in response to comments on the original proposal, NASD clarified that registered principal pre-use approval would only be required for correspondence that ''makes any financial or investment recommendation or otherwise promotes a product or service of the member.''

[11] 11 *See supra* note 4.

[12] 12 *See* NASD Response Letter, *supra* note 5.

[13] 13 *See* Edward D. Jones Letter and ICI Letter, *supra* note 4.

protections.'' [14] The other commenter commended NASD for furthering the interests of investors without being unnecessarily burdensome.[15]

Three commenters expressed reservations regarding the proposal.[16] Two of the commenters asserted that NASD has not provided sufficient justification for the proposal, which they believe will impose significant burdens on the industry.[17] These commenters argued that NASD should provide data to document the pervasiveness of the problem it is attempting to address by adopting the proposed amendments.[18] One of these commenters pointed out that the current rules seem sufficient to detect and prevent abuse.[19] The same commenter argued that the proposal would interfere with members' ability to allocate compliance resources efficiently, which could lead to, among other things, delay of important client communications or draining of assets that could be directed towards areas of greater compliance concern.[20] The other commenter argued that NASD did not properly analyze the resulting burdens of the proposal on the industry and has provided no explanation of what occurred in the relatively short period since NASD Rule 2211 was adopted to justify the proposed change.[21] Another commenter stated that the proposal is not in and of itself necessarily a bad idea or outrageously burdensome but that the Commission should examine the body of rules collectively, rather than individual rules, in order to understand the true burden of compliance.[22] Two commenters suggested that the proposed pre-use approval only be required for firms that are found to display ''risky broker/dealer behavior'' [23] or to violate the current requirements.[24] One of these commenters asserted that principal pre-use approval burdens ''good people'' who follow the rules without changing the behavior of ''bad people.'')[25] The other commenter suggested a 12-month pre-use approval requirement for firms violating the current requirements, which would then terminate unless the firm committed further violations, at which point NASD could impose more severe sanctions.[26]

In its response letter, NASD reiterated that it believes that correspondence sent to large numbers of existing retail customers, particularly correspondence intended to promote a member's products or services, raises many of the same issues as advertising and sales literature, which is subject to approval.[27] NASD argued that the commenters did not show why the risks raised by such correspondence differ from those raised by advertisements or sales literature. Furthermore, NASD disputed assertions that the problem must be pervasive in order for NASD to adopt new rules; rather, it argued, a better approach is to try to anticipate problems before they occur.

Two commenters pointed out problems with pre-use approval of email.[28] One argued that, as a result of pre-use approval, financial advisors will not be able to quickly communicate critical information to their clients.[29] The commenter further argued that the proposal, if implemented, could lead its members to curtail the use of email by registered representatives, in order to avoid the expense of complying with the proposal.[30] The other commenter indicated that members might have to require pre-use approval of all email messages since they will not be able to easily monitor which messages require pre-use approval.[31]

In response, NASD stated that such arguments were ''unpersuasive'' in that the commenters suggested that current NASD rules do not require principal pre-use approval of any emails. As NASD noted, the current rules require pre-use approval of emails sent to 25 or more prospective retail customers within a 30 calendar-day period, since such emails are considered sales literature. Therefore, NASD noted, the proposed rule change would merely add to the categories of email requiring pre-use approval.

One commenter also claimed that the exclusion for clerical or ministerial correspondence ''lacks clarity'' and that NASD should make clear whether its intent is to have the proposal relate to correspondence addressing securities products.[32] This commenter noted that if the exclusion is not clear, all correspondence will have to be pre-approved, which could create issues for making timely communications.[33]

In its response letter, NASD indicated that it is amending the proposed rule change to require pre-use approval of correspondence only if it ''makes any financial or investment recommendation or otherwise promotes a product or service of the member,''[34] rather than requiring pre-use approval of correspondence that is ''not solely and exclusively clerical or ministerial in nature.'' NASD further clarified that principal pre-use approval would not be required for correspondence concerning clerical or ministerial matters, such as dividend notices or changes in office hours, or for correspondence that does not promote a product or service of the member, such as emails including only market commentary. NASD did note, however, that all correspondence must be supervised by members in accordance with NASD Rule 3010(d).

## IV. Discussion

After careful consideration of the proposed rule change, the comment letters and NASD's response to the comments, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[35] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[36] in that it is 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 by requiring additional supervision of correspondence by broker-dealers. The Commission notes that NASD has represented that many firms require registered principal pre-use approval of some correspondence, even though not required by NASD rules. In addition, NASD carved out correspondence that

[14] 14 *See* Edward D. Jones Letter, *supra* note 4.

[15] 15 *See* ICI Letter, *supra* note 4.

[16] *See* Evolve Letter, FNIC Letter and FSI Letter, *supra* note 4.

[17] *See* FNIC Letter and FSI Letter, *supra* note 4.

[18] *Id.*

[19] *See* FSI Letter, *supra* note 4. This commenter also argued that NASD's assertion that many firms already require principal pre-use approval of correspondence is unsupported and noted that many of its members do not currently require principal pre-use approval of correspondence. *Id.*

[20] *Id.*

[21] *See* FNIC Letter, *supra* note 4. This commenter further noted that the lack of justification for the proposal is especially troubling given that NASD is not proposing to require members to submit correspondence covered by the proposed rule to the Department. The commenter argued that the policy is inconsistent with NASD's assertion that such correspondence raises the same issues as advertisements and sales literature. *Id.*

[22] *See* Evolve Letter, *supra* note 4.

[23] *Id.* This commenter further suggested that corrective behavior could be implemented in specific divisions of larger firms, rather than the entire firm. *Id.*

[24] *See* FSI Letter, *supra* note 4.

[25] *See* Evolve Letter, *supra* note 4.

[26] *See* FSI Letter, *supra* note 4.

[27] The Commission notes that advertising and sales literature are subject to pre-use approval.

[28] *See* FNIC Letter and FSI Letter, *supra* note 4.

[29] *See* FSI Letter, *supra* note 4.

[30] *Id.*

[31] *See* FNIC Letter, *supra* note 4.

[32] *Id.*

[33] *Id.*

[34] *See* Amendment No. 2.

[35] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78*o*-3(b)(6).

does not make any financial or investment recommendation or otherwise promote a product or service of the member from coverage of the rule and did not require correspondence covered by the rule to be filed with the Department. The Commission believes that requiring pre-use approval by a principal of correspondence sent to 25 or more existing retail customers within any 30 calendar-day period appropriately balances the needs of members to contact existing customers without being unduly burdened against the goal of having communications with retail customers that are fair and balanced.

The Commission is not persuaded by the commenters' arguments that pre-use approval of emails is not workable given that pre-use approval is already required for certain emails.[37] The Commission commends NASD for attempting to address problems with correspondence, rather than waiting for additional inappropriate materials to reach retail customers. Finally, the Commission believes that NASD's proposed amendment to the rule text adequately addresses concerns that the proposed rule change lacks clarity.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–NASD–2006–011), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–12443 Filed 8–1–06; 8:45 am]

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[37] For example, emails sent to 25 or more prospective retail customers within a 30 calendar-day period currently require principal pre-use approval. *See* NASD Response Letter, *supra* note 5.

[38] *Id.*

[39] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54223; File No. SR–NYSE–2006–43]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend Section 902.02 of the Listed Company Manual To Exempt Companies Transferring From NYSE Arca From Initial Listing Fees and the Annual Fee for the Year of Such Transfer

July 26, 2006.

On June 7, 2006, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 902.02 of its Listed Company Manual to provide that there shall be no initial listing and no prorated annual fee payable with respect to the first partial calendar year of listing for any company listed on NYSE Arca, Inc. (''NYSE Arca'') that transfers the listing of its primary class of common shares to the Exchange. The Commission published notice of the proposal in the **Federal Register** on June 26, 2006.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 6(b)(4) [6] and 6(b)(5) of the Act,[7] which require that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and are not designed to permit unfair discrimination between issuers. The Commission believes that the fee waiver is reasonable, given the NYSE's representation that its review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from other self-regulatory organizations. While the Commission understands that the Exchange will rely on the baseline review of any NYSE Arca listed company performed by NYSE Regulation, the Commission notes that the Exchange must conduct a thorough regulatory review of companies transferring from NYSE Arca to the Exchange to ensure that the Exchange can independently confirm that such companies qualify for listing on the Exchange. The Commission also believes the proposed waiver may enhance competition by making NYSE Arca a more attractive listing venue and a viable alternative to listing on Nasdaq.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2006–43) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–12427 Filed 8–1–06; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 54008 (June 16, 2006), 71 FR 36370.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10482 and # 10481]**

## Massachusetts Disaster Number MA–00006

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts ( FEMA–1642–DR), dated 05/25/2006.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 05/12/2006 through 05/23/2006.

*Effective Date:* 07/24/2006.

*Physical Loan Application Deadline Date:* 08/07/2006.

*EIDL Loan Application Deadline Date:* 02/26/2007.

**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 President's major disaster declaration for the Commonwealth of Massachusetts, dated 05/25/2006, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 08/07/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance*

[FR Doc. E6–12414 Filed 8–1–06; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 21, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2006–25428.
*Date Filed:* July 17, 2006.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 7, 2006.
*Description:* Joint application of Gemini Air Cargo (''Gemini'') and Amerijet International, Inc. (''Amerijet'') requesting approval of the *de facto* transfer of certain international certificate authority currently held by Gemini.

*Docket Number:* OST–2006–25275.
*Date Filed:* July 20, 2006.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 10, 2006.
*Description:* Application of American Airlines, Inc., for a Certificate of Public Convenience and Necessity to engage in scheduled foreign air transportation of persons, property, and mail between Dallas/Ft. Worth, Texas and Beijing, People's Republic of China. American also applies for the allocation of seven weekly U.S.-China combination frequencies of the DFW-Beijing route.

*Docket Number:* OST–1996–1389.
*Date Filed:* July 20, 2006.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 10, 2006.
*Description:* Application of United Air Lines, Inc., requesting renewal of its certificate of public convenience and necessity for Route 603, Segment 6, to engage in scheduled foreign air transportation of persons, property and mail between Washington, D.C. and Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain, via the intermediate points the Azores and Lisbon, Portugal. United requests that the certificate be renewed indefinitely or at a minimum for a period of five years.

*Docket Number:* OST–2006–25454.
*Date Filed:* July 21, 2006.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 11, 2006.
*Description:* Application of Flying Boat, Inc. d.b.a. Chalk's International Airlines, d.b.a Chalk's Ocean Airways intent to resume commuter air service following a temporary cessation of operations caused by unique circumstances.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E6–12437 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[OST Docket No. OST–2006–25493]**

### Surface Transportation Policy & Revenue Technical Advisory Committee

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

**ACTION:** Notice of intent to form an advisory committee.

**SUMMARY:** Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, Aug. 10, 2005, the Secretary of Transportation is establishing a technical advisory committee to collect and evaluate technical input as directed in section 1909(b)(8) of the SAFETEA–LU. Section 1909(b) of SAFETEA–LU also established the National Surface Transportation Policy and Revenue Study Commission (Revenue Commission). The purpose of this notice is to invite interested parties, organizations, and individuals, to submit applications to be considered for representation on the technical advisory committee.

**DATES:** Comments and/or applications for membership or nominations for membership, or a letter of intent to submit and application or nomination, on the technical advisory committee must be received on or before August 23, 2006. If a letter of intent is submitted, the application or nomination must be received on or before September 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alla C. Shaw, Attorney-Advisor, Federal Highway Administration, Office of the Chief Counsel, 202–366–1042 (*alla.shaw@fhwa.dot.gov*), 400 Seventh Street, SW., Room 4230, Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may submit applications online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. Anyone is able to search the DMS for all applications received in the docket established for this notice by the name of the individual submitting the application (or signing the application, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

#### Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 1909(b) of the SAFETEA–LU established the National Surface Transportation Policy and Revenue Study Commission. Within this section, Congress directed

the Secretary to establish a technical advisory committee to collect and evaluate technical input from appropriate Federal, State, and local officials with responsibility for transportation; transportation and trade associations; emergency management officials; freight providers; the general public; and other entities and persons determined to be appropriate by the Secretary to ensure a diverse range of views. (SAFETEA–LU, § 1909(b)(8)). The Surface Transportation Policy and Revenue Technical Advisory Committee is necessary and in the public interest.

A. *Notice Of Intent To Establish An Advisory Committee And Request For Comment:* In accordance with the requirements of the Federal Advisory Committee Act (FACA, 5 U.S.C. App. 2), an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to indicate the DOT's intent to create a Federal advisory committee to collect and evaluate technical input as directed in section 1909(b)(8) of the SAFETEA–LU.

B. *Name Of Committee:* Surface Transportation Policy and Revenue Technical Advisory Committee (STPR–TAC).

C. *Purpose And Objective:* The STPR–TAC will collect comments and evaluate technical information provided by stakeholders regarding the needs and financing of surface transportation as described in sections 1909(b)(5), (6), and (7). The STPR–TAC will report directly to the Secretary of Transportation. With the Secretary's approval, the TAC may assist with the work of the Revenue Commission including assisting with the collection and evaluation of technical information on the needs and financing of surface transportation as described in sections 1909(b)(5), (6), and (7) of SAFETEA–LU. With the Secretary's approval, and at the request of the Revenue Commission, the TAC, or individual TAC members, may be asked to assist with the incorporation of their work into the Revenue Commission's report to Congress. This may include drafting specific sections of the report or providing substantive technical reviews of the report, as it is prepared. The TAC may also participate in other matters closely related to the work of the Revenue Commission as approved by the Secretary.

The STPR–TAC will not exercise program management or regulatory development responsibilities and will make no decisions directly affecting the programs on which it provides advice. The STPR–TAC will provide technical advice to the Secretary of Transportation, or as directed to the Revenue Commission, from a knowledgeable and independent perspective.

D. *Balanced Membership Plans:* The TAC's membership shall be large enough to promote deliberations, but shall include only the number necessary to ensure the breadth and balance of expertise required to accomplish its purpose. Members of the TAC should possess the requisite skills and abilities to collect technical information and to provide meaningful advice and recommendations on the needs and financing of surface transportation as described in sections 1909(b)(5), (6), and (7).

This document gives notice of the purpose of the STPR–TAC and affords those interested working on the STPR–TAC the opportunity to submit an application to the DOT. The procedure for submitting an application is set out in paragraph E of this notice.

The DOT is aware that there are many more potential organizations and participants than there are membership opportunities on the STPR–TAC. It is very important to recognize that interested persons who are not selected for membership on the STPR–TAC can make valuable contributions to the work of the STPR–TAC. Interested persons and organizations may request to be placed on the STPR–TAC mailing list and may submit written comments to the STPR–TAC.

Advisory committee meetings must be open to the public except where closed or partially-closed, as determined proper and consistent with the exemptions of the Government in the Sunshine Act, 5 U.S.C. 552b(c). Any member of the public is welcome to attend the open STPR–TAC meetings, and, as provided in FACA, may contact and communicate with the STPR–TAC directly. Time will be set-aside during open meetings for this purpose, consistent with the STPR–TAC's need for sufficient time to complete its deliberations.

E. *Applications for Membership:* Each application for membership or nomination to the STPR–TAC should include:

(1) The name of the applicant or nominee and a statement of interest in the purpose and objectives of the STPR–TAC;

(2) References and a justification in support of the applicant's or nominee's unique qualifications for participation on the TAC; and

(3) A written commitment that the applicant or nominee would participate in good faith.

Every effort will be made to select STPR–TAC members who can make significant contributions to the advisory committee's efforts. A balance is needed and weight is given to a variety of factors including, but not limited to, geographical distribution, gender, minority status, organization, and expertise.

F. *Duration:* The STPR–TAC will terminate 2 years after the date of the filing of the STPR–TAC charter unless prior to that time the charter is extended in accordance with the FACA and other applicable requirements.

G. *Notice of Establishment:* After evaluating applications as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the STPR–TAC.

(Authority: Section 1909(b)(8) of Pub. L. 109–59)

Issued on: July 27, 2006.

**Maria Cino,**

*Acting Secretary of Transportation.*

[FR Doc. E6–12436 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environment Impact Statement: Jefferson and St. Clair Counties, AL

**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 (EIS) will be prepared for a proposed highway project in Jefferson and St. Clair Counties, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Catherine A. Batey, Acting Division Administrator, Federal Highway Administration, Alabama Division Office, 500 Eastern Blvd, Suite 200, Montgomery, AL 36117–2018, Telephone: (334) 223–7370.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an EIS for Federal-aid Project STPAA–PE00(6). The proposed project would involve an extension of the Birmingham Northern Beltline from Interstate 59 in Trussville, Jefferson County, to Interstate 20 in the vicinity of Leeds, St. Clair County, Alabama, for a distance of about 10 miles.

The Birmingham Northern Beltline is a planned limited access facility

intended to provide a circumferential expressway system around the Birmingham metropolitan area. The extension of the Beltline that is proposed under this project is considered necessary to provide a connecting link between Interstate 59 to Interstate 20.

Alternatives under consideration include (1) Taking no action; and (2) constructing a new multi-lane, limited access highway on new location. Incorporated into and studied with the various build alternatives within the corridor study limits, will be proposed interchange locations and designs at the crossing of U.S. 411 (S.R. 20) and the route terminus at Interstate 20.

Input for further defining the purpose and need for the proposed project and additional alternatives will be accomplished via the following. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Agencies will also be invited by letter to attend a formal Scoping Meeting. A series of public meetings will be held within the corridor study area. In addition, a public hearing will be held upon approval of the Draft EIS. The Draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the meetings and hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA contact person identified in the address provided above.

(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.)

Issued on July 27, 2006.

**Bill Van Luchene,**

*Acting Division Administrator, Montgomery, AL.*

[FR Doc. 06–6631 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and Request For Comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 15, 2006 (71 FR 28076).

**DATES:** Comments must be submitted on or before September 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 15, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 71 FR 28076. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* State Safety Participation Regulations and Remedial Actions.

*OMB Control Number:* 2130–0509.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* 6180.33/61/67/96/96A/109/110/111/112.

Abstract: The collection of information is set forth under 49 CFR Part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

*Annual Estimated Burden Hours:* 10,359.

*Title:* Certification of Glazing Materials.

*OMB Control Number:* 2130–0525.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* N/A.

Abstract: The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request. Annual Estimated Burden Hours: 119.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary

for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 26, 2006.

**D.J. Stadtler,**

*Director, Office of Budget, Federal Railroad Administration.*

[FR Doc. E6–12404 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than October 2, 2006.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0008.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Mr. Angelo at *victor.angelo@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 21, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection request (ICR) that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Inspection Brake System Safety Standards For Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

*OMB Control Number:* 2130–0008.

*Abstract:* Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law No. 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 et seq.), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA recently published a comprehensive regulatory revision of the then current requirements related to the inspection, testing, and maintenance of the brake equipment used in freight car operations. The Final Rule focused solely on freight and other non-passenger trains, and codified and solidified the maintenance requirements related to the power brake system and its components. The collection of information is used by FRA to monitor and enforce safety requirements related to power brakes on freight cars. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

*Form Number(s):* None.

*Affected Public:* Businesses.

*Respondent Universe:* 545 railroads.

*Frequency of Submission:* On occasion.

*Affected Public:* Businesses.

*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 229.27—Annual Tests | 20,000 Locomotives | 18,000 tests | 15 minutes | 4,500 | $166,500 |
| 232.1—Scope—Requests For Earlier Application of Requirements in Subparts A–C, F. | 545 Railroads | 4 requests | 1 hour | 4 | 224 |
| 232.3—Applicability—Cars Not Used in Service. | 545 Railroads | 8 cards | 10 minutes | 1 | 35 |
| 232.7—Waivers | 545 railroads | 20 petitions | 40 hours | 800 | 28,000 |
| 232.11—Penalties | 545 railroads | 1 false record | 10 minutes | .20 | 6 |
| 232.15—Movement of Defective Equipment. | 1,620,000 cars/locomotives. | 128,400 tags | 2.5 minutes | 5,350 | 197,950 |
| 232.15—Notice of Defective Car/Locomotive and Restrictions. | 1,620,000 cars/locomotives. | 25,000 notices | 3 minutes | 1,250 | 46,250 |
| 232.17—Special Approval Procedure | 545 railroads | 4 petitions | 100 hours | 400 | 22,400 |
| —Petitions For Special Approval of Pre-Revenue Service Acceptance Testing Plan. | 545 railroads | 2 petitions | 100 hours | 200 | 11,200 |
| —Copies of Petitions For Special Approval Procedure. | 545 railroads | 4 petitions | 40 hours | 160 | 5,600 |
| —Statements of Interest | Public/Railroads | 14 statements | 8 hours | 112 | 3,920 |
| —Comments on Special Approval Procedure Petition. | Public/Railroads | 13 comments | 4 hours | 52 | 1,820 |
| 232.103—General Requirements For All Train Brakes. | 370,000 cars | 66,660 stickers | 10 minutes | 11,110 | 230,644 |
| 232.105—General Requirements For Locomotives. | 20,000 locomotives | 20,000 forms | 5 minutes | 1,667 | 61,679 |
| 232.107—Air Source Requirements—Plans To Monitor All Air Yard Sources: First Year. | 545 railroads | 50 plans | 40 hours | 2,000 | 112,000 |
| —Subsequent Years | 25 new railroads | 1 plan | 40 hours | 40 | 2,240 |
| —Amendments to Plan | 50 Existing Plans | 10 amendments | 20 hours | 200 | 11,200 |
| —Record Keeping | 50 Existing Plans | 1,150 records | 20 hours | 23,000 | 805,000 |
| —Written Operating Procedures/Plans | 545 railroads | 37 plans | 20 hours | 740 | 41,440 |
| 232.109—Dynamic Brake Requirements—Records. | 545 railroads | 1,656,000 records | 4 minutes | 110,400 | 3,864,000 |
| —Repair of Inoperative Dynamic Brakes | 20,000 locomotives | 6,358 records | 4 minutes | 424 | 14,840 |
| —Locomotives with Inoperative Dynamic Brakes—Tag. | 20,000 locomotives | 6,358 tags | 30 seconds | 53 | 1,961 |
| —Deactivated Dynamic Brakes—Markings. | 8,000 locomotives | 2,800 markings | 5 minutes | 233 | 8,621 |
| —Subsequent Years—Markings | 8,000 locomotives | 20 markings | 5 minutes | 2 | 74 |
| —Written Operating Rules—Safe Train Handling. | 545 railroads | 100 oper. rules | 4 hours | 400 | 22,400 |
| —Subsequent Years—Safe Train Handling Procedures. | 5 new railroads | 5 oper. rules | 4 hours | 20 | 1,120 |
| —Amendments | 545 railroads | 15 amendments | 1 hour | 15 | 525 |
| —Over Speed Top Rules | 545 railroads | 545 rules | 1 hour | 545 | 30,520 |
| —Requests to Increase 5 MPH Over Speed Restriction. | 545 railroads | 5 requests | 20.5 hours | 103 | 3,605 |
| —Locomotive Engineer Certification Programs/PBrake. | 545 railroads | 100 amendments | 16 hours | 1,600 | 89,600 |
| —Subsequent Years | 5 new railroads | 5 amendments | 16 hours | 80 | 4,480 |
| 232.111—Train Information Handling—Procedures. | 545 railroads | 545 procedures | 140 hours | 21,890 | 1,225,840 |
| —Subsequent Years | 10 new railroads | 10 procedures | 40 hours | 400 | 22,400 |
| —Amendments | 100 railroads | 100 amendments | 20 hours | 2,000 | 70,000 |
| —Reports to Train Crews | 545 railroads | 2,112,000 rpts. | 10 minutes | 352,000 | 13,024,000 |
| 232.203—Training Requirements: Training Programs. | 545 railroads | 300 programs | 100 hours | 30,000 | 1,680,000 |
| —Subsequent Years | 15 railroads | 1 program | 100 hours | 100 | 5,600 |
| —Amendments to Written Program | 545 railroads | 545 amendments | 8 hours | 4,360 | 152,600 |
| —Training Records | 545 railroads | 67,000 records | 8 minutes | 8,933 | 312,655 |
| —Training Notifications | 545 railroads | 67,000 notices | 3 minutes | 3,350 | 117,250 |
| —Validation/Assessment Plans | 545 railroads | 545 copies | 40 hours/1 minute | 49 | 2,375 |
| Amendments to Validation/Assessment Plans. | 545 railroads | 50 amendments | 20 hours | 1,000 | 35,000 |
| 232.205—Class I Brake Test—Initial Terminal Insp. | 545 railroads | 1,656,000 | 45 minutes | 20,7000 | 931,500 |
| 232.207—Class I A Brake Tests: 1000 Mile Insp. | 545 railroads | 25 designations | 30 minutes | 13 | 455 |
| —Subsequent Years | 545 railroads | 1 designation | 1 hour | 1 | 35 |
| —Amendments | 545 railroads | 5 amendments | 1 hour | 5 | 175 |
| 232.209—Class II Brake Tests—Intermediate Insp. | 545 railroads | 1,600,000 commnt | 3 seconds | 1,333 | 59,985 |

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 232.213—Extended Haul Trains—Designations. | 84,000 train movements. | 100 designations .... | 15 minutes ..... | 25 | 875 |
| —Records ..... | 84,000 train movements. | 25,200 records ..... | 20 minutes ..... | 8,400 | 294,000 |
| 232.303—General Requirements—Track Brake Test. | 1,600,000 freight cars. | 5,600 tags ..... | 5 minutes ..... | 467 | 17,279 |
| —Location of Last Track Brake Test/Single Car Test. | 1,600,000 freight cars. | 320,000 stenciling ... | 5 minutes ..... | 26,667 | 986,679 |
| 232.305—Single Car Tests ..... | 1,600,000 freight cars. | 320,000 tests/rcds. | 45 minutes ..... | 240,000 | 8,880,000 |
| 232.309—Equipment and Devices—Tests/Calibrations. | 640 shops ..... | 5,000 tests ..... | 30 minutes ..... | 2,500 | 92,500 |
| 232.403—Design Standards For One-way EOT Devices—Unique Code. | 245 railroads ..... | 12 requests ..... | 5 minutes ..... | 1 hour | 35 |
| 232.407—Operations Requiring 2-Way EOTs. | 245 railroads ..... | 50,000 commun ..... | 30 seconds ..... | 417 | 18,765 |
| 232.409—Inspection and Testing of 2-Way EOTs. | 245 railroads ..... | 450,000 commun .... | 30 seconds ..... | 3,750 | 138,750 |
| —Testing Telemetry Equipment ..... | 245 railroads ..... | 32,708 markings ..... | 60 seconds ..... | 545 | 20,165 |
| 232.503—Process to Introduce New Brake System Technology—Special Approval. | 545 railroads ..... | 1 request/letter ..... | 60 minutes ..... | 1 | 56 |
| —Pre-Revenue Service Demonstration ... | 545 railroads ..... | 1 request ..... | 3 hours ..... | 3 | 168 |
| 232.505—Pre-Revenue Service Acceptance Testing Plan: Maintenance Procedure—1st Year. | 545 railroads ..... | 1 procedure ..... | 160 hours ..... | 160 | 8,960 |
| —Subsequent Years ..... | 545 railroads ..... | 1 procedure ..... | 160 hours ..... | 160 | 8,960 |
| —Amendments ..... | 545 railroads ..... | 1 amendment ..... | 40 hours ..... | 40 | 1,400 |
| —Design Description-Petitions ..... | 545 railroads ..... | 1 petition ..... | 67 hours ..... | 67 | 3,752 |
| —Results Pre-Revenue Service Acceptance Testing. | 545 railroads ..... | 1 report ..... | 13 hours ..... | 13 | 455 |
| —Description of Brake Systems Technologies Previously Used in Revenue Service. | 545 railroads ..... | 5 descriptions ..... | 40 hours ..... | 200 | 7,000 |

*Total Responses:* 8,644,448.

*Total Estimated Total Annual Burden:* 895,011 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 24, 2006.

**D.J. Stadtler,**

*Director, Office of Budget, Federal Railroad Administration.*

[FR Doc. E6–12406 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**New Jersey Transit (Waiver Petition Docket Number FRA–2006–24918)**

New Jersey Transit (NJTR) seeks a waiver of compliance from certain provisions of 49 CFR 238, *Passenger Equipment Safety Standards.* Specifically, NJTR seeks a waiver of compliance from the requirements of 49 CFR 238.231(b) (prohibiting the brake system design of passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, from requiring that an inspector place himself on, under, or between components of the equipment in order to observe brake actuation or release). NJTR is in the process of receiving two hundred thirty-four new bi-level passenger coaches equipped with tread brakes and inboard disk brakes. Placement of the inboard disk brake equipment does not allow for an inspector to observe the brake actuation or release without placing himself on, under, or between components of the equipment.

NJTR proposes that it be allowed to perform all brake inspections to the extent possible on a daily basis, that the two hundred thirty-four cars would also be equipped with brake indicators, two per truck, that are fed downstream of the truck air brake cutout valves. NJTR also proposes these brake indicators functionality would be tested at the required one-hundred-eighty day periodic inspection. In addition, the two hundred thirty-four new cars would receive an under car inspection to be performed by ''Qualified Maintenance Person'' over a pit not less often than every five days. NJTR indicates that the pit inspection will allow for a full and complete inspection of all brake system components.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–24918) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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

Issued in Washington, DC on July 26, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E6–12405 Filed 8–1–06; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34907]**

### Durbin & Greenbrier Valley Railroad Inc.—Operation Exemption—Greater Shenandoah Valley Development Company

Durbin & Greenbrier Valley Railroad Inc. (DGVR), a Class III rail carrier, has filed a verified notice of exemption [1] under 49 CFR 1150.41 to operate, pursuant to a 3-year agreement entered into with the Greater Shenandoah Valley Development Company (SVDC), an approximately 20.2-mile SVDC line of railroad, extending between milepost 5.0 at Pleasant Valley, VA, and milepost 25.2 near Staunton, VA, in Rockingham and Augusta Counties, VA.[2] DGVR states that it will interchange traffic with Norfolk Southern Railway Company at Pleasant Valley and with CSX Transportation, Inc., at Staunton.[3]

DGVR certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

The transaction was scheduled to be consummated no earlier than July 25, 2006 (7 days after the amendment to the notice of exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34907, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 26, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–12331 Filed 8–1–06; 8:45 am]

**BILLING CODE 4915–01–P**

[1] DGVR filed an amendment to its notice on July 18, 2006, clarifying the end points of the line and stating that it would not consummate the transaction until 7 days after the filing of the amendment.

[2] Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), previously filed a notice of exemption to operate the above-described rail line. *See Cassatt Management, LLC d/b/a Bay Coast Railroad—Operation Exemption—;Shenandoah Valley Railroad Line,* STB Finance Docket No. 34815 (STB served Feb. 6, 2006). In its notice of exemption, BCR stated that its agreement with the line's owner was to expire on February 28, 2006, but that it was currently negotiating for a new agreement to operate the subject line.

[3] The current operator of the line continues to be Eastern Shore Railroad, Inc. (ESHR). *See Eastern Shore Railroad, Inc.—Operation Exemption—Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company,* STB Finance Docket No. 34313 (STB served Mar. 11, 2003). Upon consummation of the transaction, DGVR will assume operations over the line and ESHR will cease its operations over the line.

Federal Register

**Wednesday,**
**August 2, 2006**

**Part II**

# Federal Communications Commission

**47 CFR Part 1**
**Assessment and Collection of Regulatory Fees for Fiscal Year 2006; Final Rule**

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 1**

**[MD Docket No. 06–68; FCC 06–102]**

## Assessment and Collection of Regulatory Fees for Fiscal Year 2006

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we conclude a proceeding to collect $288,771,000 in regulatory fees for Fiscal Year (FY) 2006, pursuant to section 9 of the Communications Act of 1934, as amended (the Act), and an additional $10,000,000 as required by section 3013 of the Deficit Reduction Act (Pub. L. 109–171). These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.

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

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

**SUPPLEMENTARY INFORMATION:**

**Adopted: July 12, 2006. Released: July 17, 2006.**

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing a statement.

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## I. Introduction

1. In this *Report and Order,* we conclude a proceeding to collect $288,771,000 in regulatory fees, pursuant to section 9 of the Communications Act of 1934, as amended (the Act), and an additional $10,000,000 as required by section 3013 of the Deficit Reduction Act (Pub. L. 109–171). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

## II. Discussion

2. We retain the established methods, policies, and procedures for calculating regulatory fees adopted by the Commission in prior years. We have found that this assessment methodology adopted in prior regulatory fee cycles has provided a satisfactory means for collecting the Commission's annual appropriations. In addition to the assessment methodology, the Commission retains the same administrative measures used for notification and assessment of regulatory fees as in previous years,

[1] 47 U.S.C. 159(a).

such as generating pre-completed regulatory fee assessment forms for certain regulatees.

3. The Commission is obligated to collect $288,771,000 in regulatory fees during Fiscal Year (FY) 2006 to fund the Commission's operations. Consistent with our established practice, we plan to collect these regulatory fees in the August–September 2006 time frame in order to collect the required amount by the end of the fiscal year. In addition to the $288,771,000 amount above, the Commission is required to assess and collect an additional $10,000,000 to contribute toward the Nation's debt reduction in FY 2006.[2] In our *FY 2006 Notice of Proposed Rulemaking (NPRM),* we sought comment regarding how the Commission should implement this provision.[3] Specifically, we asked whether the Commission should assess the additional $10,000,000 on application fees, on regulatory fees, or use some other form of assessment. We received no comment on this matter. Additionally, the legislative history of the act provides no guidance as to how Congress intends the Commission to collect these debt reduction funds. We believe that collecting the mandatory $10,000,000 debt reduction contribution in conjunction with our FY 2006 schedule of section 9 regulatory fees will ensure the most equitable and timely collection of such fees. Therefore, in addition to the amount mandated by Congress in the appropriations law ($288,771,000), our FY 2006 schedule of section 9 regulatory fees includes an additional $10,000,000 allocated across all service categories. Hereafter, in this *Report and Order,* we will refer to the total $298,771,000 as regulatory fees.

*A. FY 2006 Regulatory Fee Assessment Methodology*

4. On March 27, 2006, we released the *FY 2006 NPRM.* As noted in the *FY 2006 NPRM,* the section 9 regulatory fee proceeding is an annual process intended to ensure the Commission collects the amounts required by Congress. In the *NPRM,* we proposed to largely retain the section 9 regulatory fee methodology used in the prior fiscal year. Only six comments and two reply comments were filed. We address our conclusions below.

1. Development of FY 2006 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

5. In our FY 2006 regulatory fee assessment, we use the same section 9 regulatory fee assessment methodology that we adopted in FY 2005. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of FY 2006 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Attachment C. For FY 2006, the receipts collected through FY 2005 regulatory fees will be the basis for calculating the amount the Commission must collect in FY 2006. To collect the $298,771,000 million required by law, we first adjust the FY 2005 amount upward by 6.67 percent.[4] Consistent with past practice, we then divide the FY 2006 amount by the number of payment units in each fee category to determine the unit fee.[5] As in prior years, for cases involving small fees (*e.g.*, licenses that are renewed over a multiyear term), we divide the resulting unit fee by the term of the license, and then round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments To Payment Units

6. In calculating the FY 2006 regulatory fees listed in Attachment D, we further adjusted the FY 2005 list of payment units (see Attachment B for sources of payment units) based upon licensee databases and industry and trade group projections to produce the most up-to-date and equitable regulatory fee calculations possible. Whenever possible, we verified these estimates from multiple sources to ensure accuracy. Sources include Commission licensee databases, prior year payment records, and/or industry and trade association projections.[6] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2006, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, when we state that our estimated FY 2006 payment units are based on FY 2005 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

7. We consider additional factors in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid for radio stations.[7]

2. Commercial Mobile Radio Service (CMRS) Messaging Service

8. In the *FY 2006 NPRM,* we proposed to continue our policy of maintaining the CMRS Messaging Service regulatory fee at the rate originally calculated in FY 2003 (*i.e.*, $0.08 per subscriber), noting that the subscriber base in this industry has declined more than 75% from 40.8 million to 10.1 million from

[2] Section 3013 of Public Law 109–171 reads as follows, ''In addition to any fees assessed under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*), the Federal Communications Commission shall assess extraordinary fees for licenses in the aggregate amount of $10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts.''

[3] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking,* 71 FR 17410 at para. 3 (April 6, 2006) (*FY 2006 NPRM*).

[4] We were required to collect $280,098,000 in FY 2005. We are required to collect $298,771,000 in FY 2006, which is an increase of approximately 6.67 percent. Note that the required increase of approximately 6.67 percent in FY 2006 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee for individual service categories is sometimes increased by a number other than 6.67 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[5] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, *etc.*

[6] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report.* For additional information on source material, see Attachment B.

[7] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

FY 1997 to FY 2005.[8] We received supporting comments from three entities and no opposing comments.[9] All commenters endorse, at a minimum, maintaining the fee at $0.08 per subscriber. BloostonLaw urges the Commission to reduce the fee to $0.04 per subscriber, citing the paging industry's declining subscriber base and increasing regulatory obligations and expenditures that have been imposed on this industry since the inception of the section 9 regulatory fee program.[10]

9. We are cognizant of the regulatory obligations cited by BloostonLaw. The Commission has already addressed the hardships suffered by the CMRS messaging industry by freezing the fee, which would otherwise have risen significantly.[11] Moreover, the obligations cited by BloostonLaw are associated with significant regulatory costs and benefits that warrant increasing the fee. Therefore, we are not persuaded to reduce the regulatory fee amount. In consideration of the financial hardship that could be caused by increasing the fee (shrinking profit margins, additional loss of subscribers, reduced revenue, *etc.*) for this service category, we adopt our proposal to maintain the CMRS Messaging Service regulatory fee this fiscal year at $0.08 per subscriber.

3. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators

10. In our FY 2005 regulatory fee proceeding, the National Cable and Telecommunications Association (NCTA) and American Cable Association (ACA) submitted comments [12] proposing that the Commission adopt the same per-subscriber assessment for DBS operators that applies to cable television operators.[13] DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV and Echostar), in joint reply comments, argued that the cable operators failed to make the required showing to satisfy section 9(b)(3) of the Act for changes to the Commission's regulatory fee structure, specifically, ''In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.'' [14] We agreed that the cable commenters did not satisfy section 9 requirements.

11. As a procedural matter, we also found that, because the comments raised issues not contemplated in the *FY 2005 NPRM,* we had not provided sufficient notice for a change to the fee methodology for DBS operators.[15] Therefore, we stated that we would seek further information on this issue in our FY 2006 regulatory fee proceeding in order to fully explore whether there is a legal basis for such a change, and to analyze the impact of any change in the methodology used to assess fees both for DBS providers and cable television operators.[16]

12. In the *FY 2006 NPRM,* we sought comment on the appropriate regulatory fee structure for both cable operators and DBS providers.[17] We asked that commenters proposing a fee change identify the Commission rulemaking proceeding(s) or change(s) in law that they believe warrant a modification of the fee assessment schedule. NCTA, ACA, and the DBS industry again commented on this issue in FY 2006. While many of the economic, competition, and perceived equity arguments presented in these comments repeated those made in FY 2005, they also provided additional information regarding changes in law and subsequent Commission rulemakings.

13. NCTA argues that the Commission should modify the structure for assessing DBS regulatory fees. In particular, NCTA argues that DBS should be assessed on a per-subscriber basis, and that cable regulatory fees should be reduced. NCTA argues that the Commission's per-license fee scheme for DBS rests on an out-dated and faulty premise that the Commission's regulatory responsibilities with respect to DBS are unrelated to the number of end users of satellite services.[18] It asserts that the regulatory landscape for Multichannel Video Programming Distributor (MVPD) has changed significantly in the past 10 years, stating that the Commission's regulatory responsibilities with respect to the cable industry have substantially diminished, while its responsibilities with respect to the DBS industry have increased.[19] NCTA supports this assertion by noting that cable specific rulemakings at the Commission have been on the wane [20] and that rate regulation of the cable programming service tier (CPST) ended in 1999, along with all of the Commission's CPST rate review activity.[21] NCTA then highlights areas where DBS and cable are subject to a host of comparable, and in some cases service-specific, regulations. These include mandatory carriage obligations for broadcast signals, retransmission consent for the carriage of broadcast signals, network non-duplication, syndicated exclusivity and sports programming blackout requirements.[22] ACA fully supports NCTA's recommendation that the Commission impose a per-subscriber fee on DBS.[23] ACA points out the overwhelming disparity in regulatory fee assessments on small and medium-sized cable operators as compared to DBS, and states that the disparity places these operators at a structural disadvantage to their DBS competitors.[24]

14. DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV and Echostar) filed joint reply comments opposing the arguments of NCTA and ACA. The joint commenters claim that NTCA's proposal is only one part of the cable television industry's nationwide campaign to raise taxes paid by its DBS rivals.[25] DirecTV

[8] *See FY 2006 NPRM*, para. 7.

[9] Comments received from the American Association of Paging Carriers (AAPC), the law firm of Blooston, Mordkofsky, Dickens, Duffy & Pendergast, LLP (BloostonLaw), and USA Mobility, Inc.

[10] BloostonLaw notes the paging industry's requirement to contribute to the Universal Service Fund, the Telecommunications Relay Service (TRS) fund, the Local Number Portability (LNP) fund, and the North American Numbering Plan Administration (NANPA) fund. *See* BloostonLaw Comments at 3.

[11] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Report and Order and Order on Reconsideration,* 20 FCC Rcd 12259, 12264 para. 5 (2005) (*FY 2005 R&O and Order on Reconsideration*).

[12] See Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Report and Order and Order on Reconsideration,* 20 FCC Rcd 12259, 12264 para. 10 (2005) (*FY 2005 R&O and Order on Recon*). *See also* FY 2005 Comments of NCTA and FY 2005 Comments of ACA.

[13] Since the inception of the Commission's regulatory fee program, we have assessed section 9 regulatory fees on cable operators using a per-subscriber approach, which is consistent with the original (1994) statute. By contrast, section 9 regulatory fee assessments for DBS providers are based on a per-license approach, which is also consistent with the Commission's permitted amendment to the statute that took place in 1996.

[14] 47 U.S.C. 159(b)(3). In addition, 47 U.S.C. 159(b)(4) requires that if the Commission revises its fee schedule based upon Commission rulemaking proceedings or changes in law, it must provide Congress with 90 days notice before such an amendment of the fee schedule can be implemented. *See* 47 U.S.C. 159(b)(4).

[15] *See FY 2005 R&O and Order on Recon*, 20 FCC Rcd 12259, 12264 para. 10.

[16] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2006, *Notice of Proposed Rulemaking,* 71 FR 17410 at para. 8 (April 6, 2006) (*FY 2006 NPRM*).

[17] *Id.*

[18] NCTA Comments at 2.

[19] NCTA Comments at 8.

[20] NCTA Comments at 8.

[21] NCTA Comments at 8.

[22] NCTA Comments at 9.

[23] ACA Comments at 2.

[24] ACA Comments at 2.

[25] DirecTV and Echostar Reply Comments at 1 and fn. 1.

and Echostar assert that the cable industry has failed to show that DBS regulatory fees are out of line with the Commission's DBS regulatory costs and that, accordingly, the cable industry has not made an argument that satisfies the standard set forth in section 9(b)(3) for ''permitted amendments,'' to justify a change to the section 9 regulatory fees for DBS operators.[26] Specifically, DirecTV and Echostar maintain that before the Commission can amend the geostationary orbit (GSO) satellite space station fee category, it must, at a minimum, find [27] that new rulemaking proceedings or changes in law have caused additions, deletions, or changes to the nature of the GSO space station fee category such that the space station fee no longer reasonably relates to the regulatory costs caused by the GSO space station service for certain regulatory activities, as those costs may be ''adjusted'' by the benefits to space station operators of such activities.[28]

15. DirecTV and Echostar maintain that the section 9 statutory conditions have not been met.[29] They argue that NCTA's justifications for raising DBS section 9 fees are unrelated to the standard for amending fees, as those justifications range from items that have nothing to do with the GSO space station category (market and regulatory changes in the cable industry), to items that have nothing to do with rulemakings or law (DBS subscriber gains, cable subscriber losses), or to regulatory proceedings in which DBS participation has not changed significantly in years (video programming competition, closed captioning, *etc.*).[30]

16. We are not persuaded by NCTA's arguments that modifications to the section 9 regulatory fee structure are warranted at this time. We agree with DirecTV and Echostar that NCTA has not shown that the requirements of section 9 would be better satisfied by the reclassification of DBS and the assessment of the DBS fee on a per subscriber basis, as proposed by NCTA. We therefore will continue to use the section 9 regulatory fee classification of DBS as a GSO service and assess the fee on a per satellite basis as adopted by the Commission in prior fiscal years. The existing regulatory fee classification and related methodology has ensured that regulatory fees are reasonably related to the benefits provided by the Commission's activities.[31] In addition the existing classification and methodology retained herein has been proven to result in collecting the amount required by Congress in its annual appropriations for the Commission.[32] Finally, as a practical matter, we do not have sufficient time available to modify the section 9 regulatory fee classification and methodology as proposed by NCTA and still comply with the 90-day congressional notification requirement before we start our regulatory fee collections in the August/September time frame. For these reasons, we decline to adopt the NCTA's proposals and instead retain the existing section 9 regulatory fee classification and methodology for DBS at this time.

4. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS)

17. On April 27, 2006, the Commission adopted a framework for BRS/EBS regulatory fees in a BRS/EBS rulemaking.[33] Briefly, the Commission adopted a MHz-based formula for BRS with tiered fees by markets, similar to our annual scale for broadcast television stations, but on a more simplified scale.[34] As we proposed in the *FY 2006 NPRM*,[35] we would not implement these changes in our FY 2006 schedule of section 9 regulatory fees because the still-pending nature of the BRS/EBS rulemaking would not afford us with sufficient notice to do so. Accordingly, for FY 2006, BRS regulatory fees will be assessed using the rules currently in effect. For EBS, the Commission decided that section 9 regulatory fees should not be assessed on this service,[36] which is consistent with our current policy of not assessing section 9 regulatory fees on ITFS (Instructional Television Fixed Service).

5. International Bearer Circuits

18. On February 6, 2006, VSNL Telecommunications (US) Inc. (VSNL) filed a Petition for Rulemaking urging the Commission to modify the current International Bearer Circuit Fee rules and policies as applied to non-common carrier (*i.e.*, private) submarine cable operators.[37] This Petition remains pending before the Commission, which issued a Public Notice designating the proceeding as RM–11312 and requesting comment on the Petition.[38] In the *FY 2006 NPRM*, we stated that the complex issues presented by the VSNL Petition warranted consideration separately from the Commission's annual regulatory fee proceeding process, and that any comments on these issues arising from the *FY 2006 NPRM* would be addressed with the record generated by the VSNL Petition.[39] Apollo Submarine Cable System, Ltd. (Apollo), one of the parties that submitted comments on the VSNL Petition, also filed comments on the International Bearer Circuit Fee issue in response to the *FY 2006 NPRM*.[40] In accordance with our stated intent in the *FY 2006 NPRM*, we incorporate Apollo's instant comments into the VSNL Petition proceeding, RM–11312.

*B. Clarifications*

1. Clarification Regarding When Section 9 Regulatory Fees Are Collected

19. We continue to receive many inquiries each year from regulatees as to whether section 9 regulatory fees are collected in advance of our fiscal year, or whether they are collected in arrears. The Commission's fiscal year is the period of time from October 1 through September 30.[41] The Commission generally collects section 9 regulatory fees in August and/or September toward the end of the fiscal year, and the Commission will maintain the same regulatory fee schedule in FY 2006.

2. Effective Date of Payment of Multi-Year Wireless Fees

20. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a grouping

[26] DirecTV and Echostar Reply Comments at 1 and 2.

[27] Section 9(b)(3) states: ''In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.'' DirecTV & Echostar do not provide a citation for their interpretation of this provision.

[28] DirecTV and Echostar Reply Comments at 3 and 4.

[29] DirecTV & Echostar Reply Comments at 4.

[30] DirecTV & Echostar Reply Comments at 4.

[31] 47 U.S.C. 159(b)(1)(A).

[32] 47 U.S.C. 159(b)(1)(B).

[33] *See* Amendment of parts 1, 21, 73, 74 and 101 of the Commission's rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands *et al., Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, FCC 06–46, paras. 367–376 (rel. April 27, 2006) (*BRS/EBS Second Report and Order*).

[34] *See id.,* para. 376.

[35] *See FY 2006 NPRM*, 71 FR at 17412 para. 9 (April 6, 2006) (proposed not to implement in the FY 2006 schedule of section 9 Regulatory Fees any changes that might be adopted in the BRS/EBS proceeding).

[36] *See BRS/EBS Second Report* and Order at para. 373.

[37] *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM–11312 (filed February 6, 2006).

[38] *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (released February 15, 2006).

[39] *See FY 2006 NPRM* at fn. 20.

[40] *See* Apollo Comment at 2 and at fn. 6.

[41] By way of example, our Fiscal Year 2006 began on October 1, 2005 and runs through September 30, 2006.

known as ''small wireless fees'' for multi-year wireless fees.[42] Regulatory fees for this grouping are generally paid in advance for the entire 5-year or 10-year term of the license at the time that a renewal application (or application for a new license) is filed. Because these regulatory fees are paid when a renewal application (or application for a new license) is filed, these ''small wireless fees'' can be paid at any time during the fiscal year whenever the relevant application is filed. As a result, there has been some confusion as to whether the prior fiscal year (prior FY) or current fiscal year (current FY) rate applies when a renewal application (or application for a new license) is filed near the effective date of the current FY regulatory fees. The Commission clarified this matter in the *FY 2005 R&O and Order on Reconsideration*[43] and we provide further clarification below.

21. In general, the applicable fee is the one in effect as of the date that the relevant application is filed. Thus, the current FY regulatory fee is applicable if the official filing date of the application is on or after the effective date of the current fee. The current FY regulatory fees generally become effective 30 or 60 days after publication of the regulatory fees Order in the **Federal Register**, or in some instances, 90 days after delivery of the Order to Congress. Generally, the ''effective date'' of the current fiscal year regulatory fees is published in a public notice soon after the Order is released.

22. We wish to clarify the applicable filing date for wireless licenses in the fee category above. The Commission's rules for renewal of wireless licenses provide that licensees may file their renewal applications, and thus make regulatory fee payments, no more than 90 days prior to the expiration date of their licenses.[44] For the small wireless fees categories, the regulatory fee rate that applies depends upon the filing date of the application, *i.e.*, the date that the application is electronically or manually filed with the Commission in accordance with the Commission's rules. However, applicants filing electronically have varying payment options that in some cases include the option to submit the payment manually with FCC Form 159. In this case, the applicant must submit payment so that it is received within 10 days of filing the application electronically. As a result, an application that is filed shortly before the new FY fee rate becomes effective may result in payment occurring after the new FY fee rate is effective. In such cases, the fee rate will be calculated based on the prior FY fee rate because the application was electronically filed before the effective date of the current FY fee rate.

3. Clarification Regarding Experimental Licenses

23. It has come to our attention that some licensees mistakenly believe that they have a section 9 fee obligation for their experimental licenses. We clarify that holders of experimental licenses are not required to pay regulatory fees for such licenses. Any holder of an experimental license who has mistakenly paid a regulatory fee for such license may submit a refund request in accordance with the Commission's rules.[45]

*C. Administrative and Operational Issues*

24. In our *FY 2006 NPRM*, we invited comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, administrative and operational issues do impact the process of submitting fee payments. We sought general comment on ways to improve current processes. Mr. Kenneth J. Brown submitted comments on these issues, raising concerns over past practices regarding the accuracy of the Commission's billing of earth station non-payers. Mr. Brown states that last year the Commission erroneously sent licensees of recently-granted earth stations past-due bills for FY 2005 regulatory fees despite that fact that those earth stations licenses were granted after October 1, 2004 (the effective date for FY 2005 regulatory fees).[46] Because of this, Mr. Brown urges the Commission not to act on its proposal to expand its pre-billing initiatives to the earth station service category.[47]

25. In prior years the Commission's practice for issuing past-due bills was as follows. After the close of each annual regulatory fee collection cycle, we compared the FCC Registration Number (FRN) of those entities who paid with the total number of licensed entities in each fee service category and then sent those entities not having a record of payment a request for late payment or for information that clarifies their payment status. For FY 2006, we have obtained from each licensing system the names of the entities that had been granted licenses on or before October 1, 2005, prior to the start of the regulatory fee collection cycle. Using this information, we anticipate improvements in the post-regulatory fee season billing process that addresses the problem noted by Mr. Brown. Also, this fiscal year we have opted not to expand our pre-billing initiatives to the earth station category nor to any other categories, due to logistical and resource constraints.

26. In his comments, Mr. Brown also states that he erroneously overpaid a regulatory fee obligation through Fee Filer and complains of the length of time it has taken for the Commission to process his refund request. Entities who do not receive a timely response to their refund request should call ARINQUIRES via the FCC Financial Operations Help Desk at 1–877–480–3201, Option 4, or e-mail *ARINQUIRES@fcc.gov* to obtain a status update.

1. Mandatory Use of Fee Filer

27. In our *FY 2006 NPRM*, we sought comment on the impact of instituting a mandatory usage requirement for our electronic Fee Filer software application for large-volume section 9 regulatory fee payers. We invited comments solely to establish a record on this topic, stating that any such requirement would not be put into effect until FY 2007 or later.[48] We received no comments supporting such action, one comment unfavorable to the use of Fee Filer in general,[49] and one comment requesting that, if Fee Filer usage becomes mandatory, cable television operators serving less than 5,000 subscribers should have the option to mail their regulatory fee payments instead of using Fee Filer.[50] In view of the foregoing, we will not mandate use of our Fee Filer software for large-volume section 9 regulatory fee payers either in FY 2006 or FY 2007. We continue to encourage regulatees to use Fee Filer, especially those that would otherwise submit more than twenty-five (25) hardcopy Form 159–Cs.

[42] *See* 47 CFR 1.1152 (note 1). ''Small fees are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee * * * must be multiplied by the 5- or 10-year license term, as appropriate to arrive at the total amount of the regulatory fees owed * * *.''

[43] *FY 2005 R&0 and Order on Reconsideration* at para. 26.

[44] *See* 47 CFR 1.949(a).

[45] *See* 47 CFR 1.1160(d) and 1.1162. Refund requests should be sent via surface mail to: Federal Communications Commission, Office of the Managing Director, 445 12th Street, SW., Room 1–A625, Washington, DC 20554, Attention: Regulatory Fee Refund Request.

[46] Comments of Kenneth J. Brown at 1–2.

[47] Comments of Kenneth J. Brown at 1.

[48] *FY 2006 NPRM* at para. 11.

[49] Comments of Kenneth J. Brown at 3.

[50] American Cable Association (ACA) Comments at 6.

2. Proposals for Notification and Collection of Regulatory Fees

28. In this section, we sought comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we will provide public notices, fact sheets and all other relevant material on our Web site at *http://www.fcc.gov/fees/regfees.html* for the FY 2006 regulatory fee cycle. As a general practice, we will not send such material via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations Help Desk at (877) 480–3201, Option 4.

29. Although we will not send public notices and fact sheets to regulatees *en masse*, we will send specific regulatory fee bills or assessments via surface mail or e-mail to select fee categories discussed below.[51] We are pursuing our billing initiatives as part of our effort to modernize our financial practices. These initiatives also serve the purpose of providing licensees with notification of upcoming regulatory fees. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories.

a. Interstate Telecommunications Service Providers (ITSPs)—Billed

30. In FY 2001, we began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee. The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159–W to simplify the regulatory fee payment process.[52] Beginning in FY 2004, the pre-completed FCC Form 159–W was sent to carriers as a bill, rather than as an assessment of amount due. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their ITSP regulatory fees. In the *FY 2006 NPRM*, we sought comment on this billing initiative and ways to improve it. We received no comments or reply comments on our ITSP billing initiative, and will therefore continue our ITSP, Form 159–W, billing initiative in FY 2006.

b. Satellite Space Station Licensees—Billed

31. Beginning in FY 2004, we mailed regulatory fee bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (NGSO) licensees received bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

32. In the *FY 2006 NPRM*, we sought comment on this billing initiative and on ways to improve it. We received no comments or reply comments on the satellite billing initiative, and will therefore continue our practice of billing GSO and NGSO satellite space station fee categories for FY 2006. We emphasize that the bills that we generate for our GSO and NGSO licensees will only be for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, *etc.*), and we expect satellite operators to meet their full fee payment obligations for their entire portfolio of FCC licenses.

c. Additional Service Categories for Billing or Assessing

33. We initially explored the feasibility of expanding our FY 2006 section 9 regulatory fee billing initiatives to include three additional service categories: Earth Stations, Cable Television Relay Service Stations (CARS), and the Local Multipoint Distribution Service (LMDS). We did not receive any comments supporting the billing of these three additional categories, and therefore will not pursue these additional billing initiatives in this fiscal year.

d. Media Services Licensees—Assessed

34. Beginning in FY 2003, we sent fee assessment postcards via surface mail to media services entities on a per-facility basis. The postcards notified licensees of the date when fee payments were due; provided the assessed fee amount for the facility, as well as other data attributes that we used to determine the fee amount; and, beginning in FY 2004, provided licensees with a telephone number to call (Financial Operations Help Desk) in the event that they needed customer assistance. We received no comments or reply comments to improve our assessment initiative for media services licensees. Therefore, we will continue our postcard initiative in the manner originally planned for FY 2006.[53]

35. Consistent with the procedures we used last year, we will mail a single round of postcards to licensees and their other known points of contact listed in CDBS (Consolidated Database System) and in CORES (Commission Registration System), the Commission's two official databases for media services. By doing so, licensees and their other points of contact will be furnished the same information for each facility in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to all interested parties at different addresses on file for each facility also encourages all parties to visit a Commission-authorized Web site to update or correct any information concerning the facility, or to certify their fee-exempt status, if appropriate. The

[51] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounts receivable system as a current debt. By contrast, a bill is automatically recognized as a debt owed to the Commission. Bills reflect the amount owed and have a Fee Due Date of the last day of the regulatory fee payment window. Consequently, if a bill is not paid by the Fee Due Date, it becomes delinquent and is subject to our debt collection procedures. *See* 47 CFR 1.1161(c), 1.1164(f)(5) and 1.1910.

[52] Beginning in FY 2002, Form 159–W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

[53] Fee assessments are proposed to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2006.

Web site will be available to licensees throughout this summer.[54]

36. In the past, some media services licensees have mistakenly mailed their postcards back to the Commission stapled to payment checks. We emphasize that licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments, despite having received an assessment postcard. The postcards may not be used as a substitute for a completed Form 159. If the licensee does not submit a completed Form 159 along with its fee payment, we will not be able to guarantee that a licensee's regulatory fee payment will be posted accurately to the licensee's account.

37. We also emphasize that the most important data element that media services licensees need to include on their Form 159 is their facility ID number. The facility ID number is a unique identifier that remains constant over the course of a facility's existence. Despite the fact that we prominently display a facility ID number on the facility's postcard, and our Form 159 filing instructions require payers to provide their facility ID number (and associated call sign) for the facility in question, we continue to receive many incomplete Form 159s that do not provide the facility ID number for the facility for which the fee is being paid. If the facility ID number is not provided, we will not be able to guarantee that a licensee's regulatory fee payment will be posted accurately to the licensee's account.

e. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services—Assessed

38. In FY 2004, the Commission began using telephone number data from the Numbering Resource Utilization Forecast (NRUF) form to assess regulatory fees on CMRS providers. Specifically, telephone number data is used to determine the number of subscribers upon which a regulatory fee assessment will be based. In both FY 2004 and FY 2005, we sought and received comments and reply comments from licensees that helped us to improve the CMRS cellular/mobile assessment process. For FY 2006, we again solicited, but did not receive, any comments or reply comments regarding the use of telephone number data to determine the subscriber count of CMRS providers. We continue to find telephone numbers to be a reliable, accurate method for determining subscriber counts for regulatory fee purposes. Based on our review of FY 2005 results, the Commission first assessed regulatory fees on 184.7 million numbers. The adjustment process resulted in a minor reduction of only 0.2 percent, or approximately 0.3 million telephone numbers. Therefore, as in prior years,[55] we will send an assessment letter to CMRS providers using telephone number data based on the Numbering Resource Utilization Forecast (NRUF) form, which includes a list of the carrier's Operating Company Telephone Numbers (OCNs) upon which the assessment is based.[56] Consistent with existing practice, the letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier. We will also continue our procedure of giving entities an opportunity to amend their subscriber counts by sending two rounds of assessment letters—an initial assessment and a final assessment letter.

39. If the number of subscribers on the initial assessment letter differs from the subscriber count the service provider provided on its NRUF form, the carrier can correct its subscriber count by returning the assessment letter or by contacting (a telephone number will be provided in the letter) the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

40. If we receive no response to our initial assessment letter, we will assume that the initial assessment is correct and will expect the fee payment to be based on the number of subscribers listed on the initial assessment as calculated using telephone number data from the NRUF report. We will review all responses to initial assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate a final assessment letter that informs carriers as to whether or not we accept the changed number of subscribers.

41. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments. As an additional enhancement this year to this assessment process, we will include porting information (*e.g.*, information on the number of ''ports in'' and ''ports out'') in our ''initial'' assessment letter so that licensees can account for any differences between the telephone number data submitted in their NRUF report and the Commission's assessment count.

42. Although an initial and a final assessment letter will be mailed to carriers that have filed an NRUF form, some carriers may not be sent any letters of assessment because they did not file the NRUF form. These carriers should compute their fee payment using the standard methodology[57] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2005), and submit their payment accordingly on FCC Form 159. However, regardless of whether a carrier receives an assessment letter or computes the subscriber count themselves, the Commission reserves the right, under the Communications Act, to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, we note that the Commission reserves the right to assess the carrier for the difference between what was paid and what should have been paid.

43. In summary, we will (1) derive the subscriber count from NRUF telephone data based on ''assigned'' telephone number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''), which should reflect a more accurate subscriber count; (2) provide carriers with the opportunity to revise the subscriber count listed on the initial assessment letter, and (3) require carriers to confirm their subscriber counts on an aggregate basis using telephone number data in the NRUF report.

f. Cable Television Subscribers—Assessed

44. We adopt our proposal to generate fee assessment letters for the cable television industry consistent with the process the Commission used in FY 2005. We received one reply comment from the American Cable Association supporting the Commission's initiative ''to send out the fee assessment letters and emails to remind cable operators of their fee payment obligations.'' [58] Under our proposal, we will generate fee assessment letters for the cable

[54] The Commission-authorized Web site for media services licensees is *http://www.fccfees.com.*

[55] *See FY 2005 R&O and Order on Reconsideration*, 20 FCC Rcd 12259, 12264 paras. 38–44.

[56] As described below, the NRUF figure will be adjusted for porting.

[57] Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—commercial Wireless Services for FY 2005* at 1 (rel. July 2005). (*http://www.fcc.gov/fees/regfees.html*)

[58] Reply comments from the American Cable Association at 6.

operators who are on file as having paid regulatory fees the previous fiscal year for their basic cable subscribers, and request that they access a Commission-authorized web site to provide their aggregate basic cable subscriber count as of December 31, 2005. Also, as an additional means of notifying cable television regulatees of their section 9 regulatory fee payment obligations for FY 2006, we will send an e-mail reminder to all operators that have an e-mail address populated in the Media Bureau's Cable Operations and Licensing System (COALS).

45. Our assessment letter to each operator will (1) announce the due date for payment of regulatory fees; (2) reflect the subscriber count for which the operator paid regulatory fees in FY 2005, thereby certifying the subscriber count as of December 31, 2004; and (3) request that the operator access a Commission-authorized web site to provide its aggregate subscriber count as of December 31, 2005. If the number of subscribers as of December 31, 2005 differs from that as reported for last year, operators will be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet will be able to contact the FCC Financial Operations Help Desk at (877) 480–3201, Option 4 to provide their subscriber count as of December 31, 2005.

46. Some cable operators may not have made regulatory fee payments in FY 2005 and, as a result, will not receive an assessment letter for FY 2006 regulatory fees. For example, a new company may have become operational after the first day of the fiscal year and therefore did not have a regulatory fee obligation in FY 2005; or an existing company did not make a payment because it filed a petition for waiver of regulatory fees for FY 2005 based on financial hardship. Regardless of the circumstance, we emphasize that not receiving a regulatory fee assessment letter in FY 2006 does not excuse an operator from its obligation to pay FY 2006 regulatory fees. All non-exempt cable operators, not only those that made payments in FY 2005 and/or receive assessment letters for FY 2006 fees, are required to make payments.

47. We will also retain the payment procedures for cable television operators that we have had in place for the past two fiscal years. That is, we will continue to permit cable television operators to base their payment on their company's aggregate subscriber count as of December 31, 2005, rather than requiring them to report subscriber counts on a per community unit identifier (CUID) basis on the FCC Form 159 Remittance Advice. After providing their company's aggregate subscriber count in Block 25A of the FCC Form 159, operators will still be required to certify the accuracy of the subscriber count in Block 30.

3. Streamlined Regulatory Fee Payment Process for CMRS Providers

48. We proposed in our *FY 2006 NPRM* to permit CMRS Cellular, Mobile, and Messaging service providers using an FCC Form 159 or the automated Fee Filer system to pay their subscriber totals at the aggregate level without having to identify and associate their subscriber counts with calls signs. Because we are requiring CMRS Cellular/Mobile providers to use the aggregate subscriber totals from their Numbering Resource Utilization Forecast report (NRUF),[59] netted for porting, it would be consistent for providers to pay their subscriber totals at the aggregate level as well without having to associate subscriber counts with their individual call signs. We received one comment from the American Association of Paging Carriers supporting the Commission's effort to eliminate the requirement of having to allocate the subscriber count with their respective call signs.[60] We believe that eliminating this requirement will improve the Commission's efficiency in processing regulatory fee payments, as well as reduce the administrative burden on licensees during the payment process. As a result, we eliminate the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment if they pay their regulatory fees at the aggregate subscriber level.

## III. Procedural Matters

### *A. Payment of Regulatory Fees*

1. De Minimis Fee Payment Liability

49. Consistent with past practice, regulatees whose total FY 2006 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2006 regulatory fees.

2. Standard Fee Calculations and Payment Dates

50. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* Regulatory fees must be paid for AM/FM radio station and VHF/UHF television station initial construction permits that were issued on or before October 1, 2005, and for all broadcast facility licenses granted on or before October 1, 2005. However, in instances where a permit or license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the permit or license as of the Fee Due Date.

(b) *Wireline (Common Carrier) Services:* Fees must be paid for any authorization that was granted on or before October 1, 2005. However, in instances where a permit or license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the permit or license as of the Fee Due Date.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization that was issued on or before October 1, 2005. The number of subscribers, units or circuits on December 31, 2005 will be used as the basis from which to calculate the fee payment.

The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, pay what the Commission refers to as ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of the 5-year or 10-year term of initial license, and only pay fees again at the time of license renewal. As a result, the Commission does not collect regulatory fees for these eleven fee categories on an annual basis.

(d) *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* The number of basic cable television subscribers on December 31, 2005 will be used as the basis from which to calculate the fee payment.[61] For CARS licensees, fees must be paid for any license that was granted on or before October 1, 2005. In instances where a CARS license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date.

(e) *International Services:* For earth stations and geostationary orbit space stations, regulatory fees must be paid for stations that were licensed and operational on or before October 1, 2005. In instances

[59] For more information on our proposed regulatory fee assessment initiative for CMRS providers this fiscal year, *see also* section II.C.2.e. of this *Report and Order.*

[60] Comments of American Association of Paging Carriers at 3.

[61] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2005, rather than on a count as of December 31, 2005.

where a license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date. For non-geostationary orbit satellite systems, fees must be paid for systems that were licensed and operational on or before October 1, 2005. In instances where a license is transferred or assigned after October 1, 2005, responsibility for payment rests with the holder of the license as of the Fee Due Date. For international bearer circuits, payment is calculated on a per-active circuit basis as of December 31, 2005.[62]

3. Limitations on Credit Card Transactions

51. The U.S. Treasury has advised the Commission that it will reject Credit Card transactions greater than $99,999.99 from a single credit card in a single day. The U.S. Treasury has published Bulletin No. 2005–03 in which Federal Agencies are directed to limit credit card collections per these rules. The Commission will institute policies to conform to the U.S. Treasury policy. Entities needing to remit amounts of $100,000.00 or greater should use check, ACH or Fed Wire payment methods. Additional information can be found at *http://www.fcc.gov/fees.*

**B. Enforcement**

52. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, A LATE PAYMENT PENALTY OF 25 PERCENT OF THE AMOUNT OF THE REQUIRED REGULATORY FEE WILL BE ASSESSED ON THE FIRST DAY FOLLOWING THE DEADLINE DATE FOR FILING OF THESE FEES. REGULATORY FEE PAYMENT MUST BE RECEIVED AND STAMPED AT THE LOCKBOX BANK BY THE LAST DAY OF THE REGULATORY FEE FILING WINDOW, AND NOT MERELY POSTMARKED BY THE LAST DAY OF THE WINDOW. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (*see* 47 CFR 1.1910) and the provisions set forth in the Debt Collection Improvement Act of 1996 (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, the 25 percent late charge penalty will be assessed on the portion that is not paid in a timely manner.

53. Furthermore, our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[63] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

*C. Final Paperwork Reduction Act of 1995 Analysis*

54. This *Report and Order* does not contain proposed or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

*D. Congressional Review Act Analysis*

55. The Commission will send a copy of this *Report and Order in MD Docket No. 06–68* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**IV. Ordering Clauses**

56. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r) that the FY 2006 section 9 regulatory fee assessment requirements *are adopted* as specified herein.

57. *It is further ordered* that part 1 of the Commission's rules *are amended* as set forth in the rule changes, and these rules shall become effective September 1, 2006.

58. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order in MD Docket No. 06–68,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

59. *It is further ordered* that this proceeding is *terminated.*

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

Administrative practice and procedure.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Attachment A—Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),[1] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2006*.[2] Written public comments were sought on the FY 2006 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

[62] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001,* MD Docket No. 01–76, *Report and Order,* 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2005* at 3 (rel. July 2005) (the fact sheet is available on the FCC Web site at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf*).

[63] *See* 47 CFR 1.1161(c), 1.1164(f)(5) and 1.1910.

[1] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Notice of Proposed Rulemaking,* 71 FR 17410 at para. 7 (April 6, 2006) (*FY 2006 NPRM*).

[3] 5 U.S.C. 604.

**I. Need for, and Objectives of, the Proposed Rules**

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $298,771,000, the amount that Congress has required the Commission to recover, which includes the collection of an additional $10,000,000 by the Commission to contribute toward the Nation's debt reduction in fiscal year 2006. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

**II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. None.

**III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, herein adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

5. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[8]

6. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[9]

7. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [10] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[11] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [12] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[13] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[14] According to Commission data,[15] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

10. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[16] According to Commission data,[17] 820 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 820 carriers, an estimated 726 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by these rules.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[18] According to Commission data,[19] 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[7] 15 U.S.C. 632.

[8] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. 601(5). Tables 490 and 492.

[11] U.S. Census Bureau, *Statistical Abstract of the United States: 2000,* section 9, pages 299–300, Tables 490 and 492.

[12] 15 U.S.C. 632.

[13] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[14] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

[15] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'' at Table 5.3, Page 5–5 (June 2005) (hereinafter ''*Trends in Telephone Service*''). This source uses data that are current as of October 1, 2004.

[16] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[17] ''*Trends in Telephone Service*'' at Table 5.3.

[18] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[19] ''*Trends in Telephone Service*'' at Table 5.3.

of local resellers are small entities that may be affected by these rules.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[20] According to Commission data,[21] 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

13. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[22] According to Commission data,[23] 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] According to Commission data,[25] 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

15. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[26] According to Commission data,[27] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[28] According to Commission data,[29] 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

17. *800 and 800-Like Service Subscribers.*[30] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[31] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[32] According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

18. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts.[33] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[34] Of this total, 273 firms had annual receipts of under $10 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

19. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [35] According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.[36] Of this total, 424 firms had annual receipts of $5 million to

[20] 13 CFR 121.201, NAICS code 517310 (changed to 513330 in October 2002).

[21] ''*Trends in Telephone Service*'' at Table 5.3.

[22] 3 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[23] ''*Trends in Telephone Service*'' at Table 5.3.

[24] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[25] ''*Trends in Telephone Service*'' at Table 5.3.

[26] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[27] ''*Trends in Telephone Service*'' at Table 5.3.

[28] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[29] ''*Trends in Telephone Service*'' at Table 5.3.

[30] We include all toll-free number subscribers in this category, including those for 888 numbers.

[31] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[32] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'', Tables 18.4, 18.5, 18.6, and 18.7, (June 2005).

[33] 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

[34] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[35] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

[36] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513390 (issued October 2000).

$9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

20. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [37] and ''Cellular and Other Wireless Telecommunications.'' [38] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[39] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[40] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, U.S. Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[41] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[42] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

21. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [43] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[44] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[45] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[46] Thus, under this size standard, the great majority of firms can be considered small entities.

22. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [47] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, U.S. Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[48] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[49] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 604 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[50] We have estimated that 427 of these are small, under the SBA small business size standard.[51]

23. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Paging.'' [52] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[53] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[54] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

24. In the *Paging Second Report and Order*, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[55] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[56] The SBA has approved this definition.[57] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were

[37] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[38] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[39] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[40] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[41] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[42] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[43] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, ''On-Line Information Services'' (changed to current name and to code 518111 in October 2002).

[44] 13 CFR 121.201, NAICS code 518111.

[45] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[46] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[47] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[48] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[49] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[50] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'' at Table 5.3, page 5–5 (June 2005). This source uses data that are current as of October 1, 2004.

[51] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'' at Table 5.3, page 5–5 (June 2005). This source uses data that are current as of October 1, 2004.

[52] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[53] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[54] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[55] Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (Paging Second Report and Order); *see also* Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[56] *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

[57] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

sold.[58] Fifty-seven companies claiming small business status won 440 licenses.[59] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[60] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[61] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[62] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[63] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

25. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[64] The SBA has approved these definitions.[65] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

26. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[66] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[67] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.[68] We have estimated that 427 of these are small under the SBA small business size standard.

27. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[69] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[70] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[71] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[72] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[73]

28. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.[74] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

29. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[75] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[76] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and

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[58] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[59] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[60] *See* ''Lower and Upper Paging Band Auction Closes,'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[61] *See* ''Lower and Upper Paging Bands Auction Closes,'' Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[62] *See Trends in Telephone Service*, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers by Size of Business) (June 2005).

[63] 13 CFR 121.201, NAICS code 517211.

[64] Amendment of the Commission's rules to Establish part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[65] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[66] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[67] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[68] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service*'' at Table 5.3, page 5–5 (June 2005). This source uses data that are current as of October 1, 2004.

[69] *See* Amendment of parts 20 and 24 of the Commission's rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[70] *See* Amendment of parts 20 and 24 of the Commission's rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, para. 60.

[71] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[72] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (released January 14, 1997).

[73] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[74] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 2339 (2001).

[75] Implementation of section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

[76] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice*, PNWL 94–004 (released Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice*, PNWL 94–27 (released Nov. 9, 1994).

Order.[77] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[78] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[79] The SBA has approved these small business size standards.[80] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[81] Three of these claimed status as a small or very small entity and won 311 licenses.

30. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[82] We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[83] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[84] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[85] The SBA has approved these small size standards.[86] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[87] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[88] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[89]

31. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[90] This auction, previously scheduled for January 13, 2003, has been postponed.[91]

32. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[92] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[93] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[94] SBA approval of these definitions is not required.[95] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[96] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[97]

33. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[98] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[99] The SBA has approved these small business size standards for the 900 MHz Service.[100] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size

[77] Amendment of the Commission's rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[78] Amendment of the Commission's rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[79] Amendment of the Commission's rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[80] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[81] *See* ''Narrowband PCS Auction Closes,'' *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

[82] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022 (2002).

[83] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[84] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[85] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1088, para. 173 (2002).

[86] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[87] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[88] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[89] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[90] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to part 27 of the Commission's rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

[91] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[92] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[93] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[94] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[95] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's rules, *Second Report and Order*, 15 FCC Rcd 5299, 5343, para. 108 n. 246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[96] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice*, 15 FCC Rcd 18026 (2000).

[97] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[98] 47 CFR 90.814(b)(1).

[99] 47 CFR 90.814(b)(1).

[100] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[101] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[102]

34. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[103] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[104] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

35. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

36. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[105] According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.[106] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

37. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[107] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[108] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[109] The SBA has approved these small size standards.[110] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[111] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[112] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[113] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[114]

38. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[115] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications

[101] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[102] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[103] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice*, 15 FCC Rcd 17162 (2000).

[104] *See* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 1736 (2000).

[105] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[106] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (October 2000).

[107] Amendment of part 90 of the Commission's rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[108] *Id.* at 11068, paras. 291.

[109] *Id.*

[110] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[111] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[112] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[113] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice*, 14 FCC Rcd 11218 (WTB 1999).

[114] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[115] *See* 13 CFR 121.201, NAICS code 517212.

category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[116]

39. The Commission's 1994 Annual Report on PLMRs [117] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

40. *Fixed Microwave Services.* Fixed microwave services include common carrier,[118] private operational-fixed,[119] and broadcast auxiliary radio services.[120] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[121] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

41. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[122] An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[123] The SBA has approved these small business size standards.[124] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

42. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[125] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[126] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[127] The SBA has approved these small business size standards in the context of LMDS auctions.[128] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

43. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[129] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[130] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[131] A very small business is

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[116] *See generally* 13 CFR 121.201.

[117] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at para. 116.

[118] *See* 47 CFR 101 et seq. (formerly, part 21 of the Commission's rules) for common carrier fixed microwave services.

[119] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[120] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[121] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[122] *See* Amendment of the Commission's rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order,* 12 FCC Rcd 18600 (1997).

[123] *Id.*

[124] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (VoIP); *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau; Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

[125] *See* Rulemaking in Amend parts 1, 2, 21, 25, of the Commission's rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[126] *See* Rulemaking to Amend parts 1, 2, 21, 25, of the Commission's rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[127] *See* Rulemaking to Amend parts 1, 2, 21, 25, of the Commission's rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[128] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[129] *See* ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing.'' *Public Notice,* 9 FCC Rcd 6227 (1994).

[130] Implementation of section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order,* 9 FCC Rcd 2330 (1994).

[131] Amendment of part 95 of the Commission's rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and*

Continued

defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[132] The SBA has approved of these definitions.[133] At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

44. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[134] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[135] These definitions have been approved by the SBA.[136] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

45. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[137] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[138] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[139] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 500 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

46. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[140] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[141] There are fewer than 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

47. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[142] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[143] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

48. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[144] There is presently one licensee in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[145] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[146]

49. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[147] ''Very small business'' is defined as an entity that, together with

*Memorandum Opinion and Order,* 15 FCC Rcd 1497 (1999).

[132] *Id.*

[133] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[134] Amendment of part 90 of the Commission's rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order,* 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR 90.1103.

[135] Amendment of part 90 of the Commission's rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[136] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

[137] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[138] BETRS is defined in § 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[139] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[140] The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

[141] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[142] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[143] Amendment of the Commission's rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853 (1998).

[144] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[145] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[146] *Id.*

[147] *See* Amendment of the Commission's rules Regarding Multiple Address Systems, *Report and Order,* 15 FCC Rcd 11956, 12008, para. 123 (2000).

its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[148] The SBA has approved of these definitions.[149] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[150] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

50. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the ''Cellular and Other Wireless Telecommunications'' definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[151] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

51. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[152] According to U.S. Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[153] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[154] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [155] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

52. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[156] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[157] The SBA has approved these definitions.[158] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

53. *Multipoint Distribution Service (now known as Broadband Radio Service), Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[159] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[160] The SBA has approved of this standard.[161] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[162] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[163]

54. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[164] which includes all such companies generating $12.5 million or less in annual receipts.[165] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire

[148] *Id.*

[149] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[150] *See* ''Multiple Address Systems Spectrum Auction Closes,'' *Public Notice,* 16 FCC Rcd 21011 (2001).

[151] *See* 13 CFR 121.201, NAICS code 517212.

[152] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[153] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued October 2000).

[154] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[155] Teligent acquired the DEMS licenses other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[156] Amendments to parts 1, 2, 87 and 101 of the Commission's rules To License Fixed Services at 24 GHz, *Report and Order,* 15 FCC Rcd 16934, 16967, para. 77 (2000) (*24 GHz Report and Order*); *see also* 47 CFR 101.538(a)(2).

[157] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[158] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[159] Amendment of parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding, *Report and Order,* 10 FCC Rcd 9589, 9593, para. 7 (1995) (*MDS Auction R&O*).

[160] 47 CFR 21.961(b)(1).

[161] *See* Letter to Margaret Wiener, chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[162] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O,* 10 FCC Rcd at 9608, para. 34 (1995).

[163] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[164] 13 CFR 121.201, NAICS code 517510.

[165] *Id.*

year.[166] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[167] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies, herein adopted.

55. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities.[168] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

56. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[169] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [170] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,370 commercial television stations (December 31, 2005) in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [171] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,145 low power television stations (LPTV).[172] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

57. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

58. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[173] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' [174] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,988 commercial radio stations (December 31, 2005) in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [175] are included.[176] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

59. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[177]

60. The Commission estimates that there are approximately 3,995 FM translators and boosters.[178] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[179]

61. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue

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[166] U.S. Census Bureau, 1997 Economic Census, Subject Series; Information, ''Establishment and Firm Size (including Legal Form of Organization),'' Table 4 (issued October 2000).

[167] *Id.*

[168] In addition, the term, ''small entity'' under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[169] *See* OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

[170] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 1520 in October 2002). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See id.* at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Viceo Industries.

[171] Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[172] FCC News Release, ''Broadcast Station Totals as of December 31, 2005.''

[173] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

[174] *Id.*

[175] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[176] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[177] 13 CFR 121.201, NAICS codes 513111 and 513112.

[178] FCC News Release, ''Broadcast Station Totals as of December 31, 2005.''

[179] 15 U.S.C. 632.

annually.[180] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[181] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies, herein adopted.

62. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[182] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[183] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies, herein adopted.

63. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [184] The Commission has determined that there are 63,000,000 subscribers in the United States.[185] Therefore, an operator serving fewer than 630,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[186] Based on available data, the Commission estimates that the number of cable operators serving 630,000 subscribers or fewer, totals 1,450.[187] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[188] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

64. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.[189] The SBA has created a small business size standard for Cable and Other Program Distribution.[190] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[191] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies, herein adopted.

65. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and Other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[192] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[193] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[194] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies, herein adopted.

66. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.[195] Accordingly, there are no licensees in this service.

67. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

68. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[196] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast

[180] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[181] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[182] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995).

[183] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[184] 47 U.S.C. 543(m)(2).

[185] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice,* DA 01–158 (January 24, 2001).

[186] 47 CFR 76.901(f).

[187] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA 01–0158 (released January 24, 2001).

[188] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[189] *See* 47 U.S.C. 573.

[190] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[191] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[192] 13 CFR 121.201, NAICS code 517510.

[193] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[194] *Id.*

[195] ''Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,'' *Public Notice,* DA 03–2354 (August 28, 2003).

[196] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues f or the preceding three years not to exceed $3 million dollars.[197] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

69. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[198] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[199] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[200] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the rules, herein adopted.

70. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[201] There are a total of approximately 127,540 licensees in these services. Governmental entities [202] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[203]

## IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

71. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[204] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

72. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

73. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25

[197] Amendment of the Commission's rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853 (1998).

[198] 47 CFR part 90.

[199] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[200] 13 CFR 121.201, NAICS Code 517212.

[201] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments that are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[202] 47 CFR 1.1162.

[203] 5 U.S.C. 601(5).

[204] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

percent in addition to the required fee.[205] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[206] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[207] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the Debt Collection Improvement Act of 1996, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[208]

74. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[209] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

## V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

76. The Omnibus Appropriations Act for FY 2006, Public Law 109–108, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2006.[210] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

77. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are using in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

78. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 204, *supra.*

79. *Report to Small Business Administration:* The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

80. *Report to Congress:* The Commission will send a copy of this FRFA, along with this *Report and Order,* in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

## Attachment B—Sources of Payment Unit Estimates for FY 2006

In order to calculate individual service fees for FY 2006, we adjusted FY 2005 payment units for each service to more accurately reflect expected FY 2006 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), and the Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2006 estimates with actual FY 2005 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2006 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2006 payment units are based on FY 2005 actual payment units, it does not necessarily mean that our FY 2006 projection is *exactly* the same number as FY 2005. It means that we have either rounded the FY 2006 number or adjusted it slightly to account for these variables.

| Fee category | Sources of payment unit estimates |
|---|---|
| Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed. | Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis. |

[205] 47 CFR 1.1164.

[206] 47 CFR 1.1164(c).

[207] Public Law 104–134, 110 Stat. 1321 (1996).

[208] 31 U.S.C. 7701(c)(2)(B).

[209] 47 CFR 1.1166.

[210] 47 U.S.C. 159(a).

| Fee category | Sources of payment unit estimates |
|---|---|
| CMRS Mobile Services | Based on Wireless Telecommunications Bureau estimates. |
| CMRS Messaging Services | Based on Wireless Telecommunications Bureau Competition Report estimates. |
| AM/FM Radio Stations | Based on estimates derived from CDBS, as adjusted for exemptions, and actual FY 2005 payment units. |
| UHF/VHF Television Stations | Based on data listed in the 2006 Edition of the Television & Cable Factbook, as well as actual FY 2005 payment units. |
| AM/FM/TV Construction Permits | Based on estimates derived from CDBS, as well as actual FY 2005 payment units. |
| LPTV, Translators and Boosters | Based on actual FY 2005 payment units. |
| Broadcast Auxiliaries | Based on actual FY 2005 payment units. |
| BRS (formerly MDS/MMDS) | Based on Wireless Telecommunications Bureau estimates and actual FY 2005 payment units. |
| Cable Television Relay Service (CARS) Stations. | Based on actual FY 2005 payment units. |
| Cable Television System Subscribers | Based on industry estimates of subscriber counts, and actual FY 2005 payment units. |
| Interstate Telecommunication Service Providers | Based on actual FY 2005 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2006 revenue growth/decline for industry, and projections by the Wireline Competition Bureau. |
| Earth Stations | Based on actual FY 2005 payment estimates and projected FY 2006 units. |
| Space Stations (GSOs & NGSOs) | Based on International Bureau licensee data base estimates. |
| International Bearer Circuits | Based on FY 2005 actual units. |
| International HF Broadcast Stations, International Public Fixed Radio Service. | Based on International Bureau estimates. |

**Attachment C—Calculation of FY 2006 Revenue Requirements and Pro-Rata Fees**

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee category | FY 2006 payment units | Years | FY 2005 revenue estimate | Pro-rated FY 2006 revenue requirement * | Computed new FY 2006 regulatory fee | Rounded new FY 2006 regulatory fee | Expected FY 2006 revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (Exclusive Use) | 2,200 | 10 | 370,000 | 393,725 | 18 | 20 | 440,000 |
| PLMRS (Shared use) | 25,000 | 10 | 2,300,000 | 2,447,482 | 10 | 10 | 2,500,000 |
| Microwave | 2,000 | 10 | 1,560,000 | 1,660,031 | 83 | 85 | 1,700,000 |
| 218–219 MHz (Formerly IVDS) | 3 | 10 | 1,500 | 1,596 | 53 | 55 | 1,650 |
| Marine (Ship) | 8,000 | 10 | 700,000 | 744,886 | 9 | 10 | 800,000 |
| GMRS | 17,000 | 5 | 525,000 | 558,664 | 7 | 5 | 425,000 |
| Aviation (Aircraft) | 6,000 | 10 | 370,000 | 393,725 | 7 | 5 | 300,000 |
| Marine (Coast) | 600 | 10 | 100,000 | 106,412 | 18 | 20 | 120,000 |
| Aviation (Ground) | 1,500 | 10 | 120,000 | 127,695 | 9 | 10 | 150,000 |
| Amateur Vanity Call Signs | 8,500 | 10 | 166,443 | 177,116 | 2.08 | 2.08 | 177,116 |
| AM Class A | 69 | 1 | 202,950 | 217,032 | 3,145 | 3,150 | 217,350 |
| AM Class B | 1,612 | 1 | 2,467,600 | 2,638,824 | 1,637 | 1,625 | 2,619,500 |
| AM Class C | 950 | 1 | 860,400 | 920,102 | 969 | 970 | 921,500 |
| AM Class D | 1,769 | 1 | 2,874,625 | 3,074,092 | 1,738 | 1,750 | 3,095,750 |
| FM Classes A, B1 & C3 | 3,068 | 1 | 6,013,875 | 6,518,302 | 2,125 | 2,125 | 6,519,500 |
| FM Classes B, C, C0, C1 & C2 | 2,908 | 1 | 7,333,425 | 7,925,998 | 2,726 | 2,725 | 7,924,300 |
| AM Construction Permits | 95 | 1 | 35,030 | 37,461 | 394 | 395 | 37,525 |
| FM Construction Permits [1] | 200 | 1 | 267,300 | 115,000 | 575 | 575 | 115,000 |
| Satellite TV | 123 | 1 | 132,225 | 141,400 | 1,150 | 1,150 | 141,450 |
| Satellite TV Construction Permit | 3 | 1 | 1,605 | 1,716 | 572 | 570 | 1,710 |
| VHF Markets 1–10 | 44 | 1 | 2,664,925 | 2,849,841 | 64,769 | 64,775 | 2,850,100 |
| VHF Markets 11–25 | 61 | 1 | 2,725,175 | 2,914,272 | 47,775 | 47,775 | 2,914,275 |
| VHF Markets 26–50 | 75 | 1 | 2,305,800 | 2,465,797 | 32,877 | 32,875 | 2,465,625 |
| VHF Markets 51–100 | 116 | 1 | 2,218,400 | 2,372,332 | 20,451 | 20,450 | 2,372,200 |
| VHF Remaining Markets | 208 | 1 | 975,875 | 1,043,590 | 5,017 | 5,025 | 1,045,200 |
| VHF Construction Permits | 9 | 1 | 28,575 | 30,558 | 3,395 | 3,400 | 30,600 |
| UHF Markets 1–10 | 89 | 1 | 1,682,100 | 1,846,288 | 20,745 | 20,750 | 1,846,750 |
| UHF Markets 11–25 | 80 | 1 | 1,384,475 | 1,528,011 | 19,100 | 19,100 | 1,528,000 |
| UHF Markets 26–50 | 117 | 1 | 1,155,750 | 1,283,415 | 10,969 | 10,975 | 1,284,075 |
| UHF Markets 51–100 | 168 | 1 | 992,250 | 1,091,308 | 6,496 | 6,500 | 1,092,000 |
| UHF Remaining Markets | 187 | 1 | 312,225 | 333,890 | 1,786 | 1,775 | 331,925 |
| UHF Construction Permits [1] | 19 | 1 | 192,950 | 33,725 | 1,775 | 1,775 | 33,725 |
| Broadcast Auxiliaries | 24,000 | 1 | 250,000 | 267,347 | 11 | 10 | 240,000 |
| LPTV/Translators/Boosters | 2,900 | 1 | 1,145,500 | 1,224,985 | 422 | 420 | 1,218,000 |
| CARS Stations | 850 | 1 | 139,500 | 149,180 | 176 | 175 | 148,750 |
| Cable TV Systems | 63,000,000 subscribers | 1 | 46,800,000 | 50,047,394 | 0.794 | 0.79 | 49,770,000 |
| Interstate Telecommunication Service Providers. | $53,100,000,000 | 1 | 131,220,000 | 140,325,193 | 0.00264266 | 0.00264 | 140,184,000 |
| CMRS Mobile Services (Cellular/Public Mobile). | 210,000,000 subscribers | 1 | 39,380,000 | 42,547,534 | 0.203 | 0.20 | 42,000,000 |
| CMRS Messaging Services | 6,500,000 subscribers | 1 | 896,000 | 523,167 | 0.08 | 0.08 | 520,000 |
| BRS [2] | 1,767 | 1 | 459,000 | 489,416 | 277 | 275 | 485,925 |
| LMDS | 330 | 1 | 84,150 | 91,422 | 277 | 275 | 90,750 |
| International Bearer Circuits 64kb circuits. | 5,300,000 | 1 | 7,261,000 | 7,764,832 | 1.47 | 1.47 | 7,791,000 |
| International Public Fixed | 1 | 1 | 1,800 | 1,925 | 1,925 | 1,925 | 1,925 |
| Earth Stations | 3,500 | 1 | 697,000 | 745,364 | 213 | 215 | 752,500 |
| International HF Broadcast | 5 | 1 | 3,825 | 4,090 | 818 | 820 | 4,100 |
| Space Stations (Geostationary) | 87 | 1 | 9,065,925 | 9,694,998 | 111,437 | 111,425 | 9,693,975 |
| Space Stations (Non-Geostationary. | 6 | 1 | 674,550 | 721,356 | 120,226 | 120,225 | 721,350 |
| * Total Estimated Revenue to be Collected. | | | 281,118,728 | 300,592,490 | | | 299,624,101 |
| * Total Revenue Requirement | | | 280,098,000 | 298,771,000 | | | 298,771,000 |

| Fee category | FY 2006 payment units | Years | FY 2005 revenue estimate | Pro-rated FY 2006 revenue requirement * | Computed new FY 2006 regulatory fee | Rounded new FY 2006 regulatory fee | Expected FY 2006 revenue |
|---|---|---|---|---|---|---|---|
| Difference [4] | | | 1,020,728 | 1,821,490 | | | 853,101 |

*1.066665953 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 109–108 and 47 U.S.C. 159(a)(2)). The factor also includes an additional $10 million to be collected to reduce the Nation's debt per section 3013 of Public Law 109–171.

[1] The FM Construction Permit and the UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service, which was reduced to $575 for FM Construction Permits and $1,775 for UHF Construction Permits.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See* Amendment of parts 1, 21, 73, 74 and 101 of the Commission's rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands et al, *Report & Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165, 14169 para. 6 (2004) (*R&O and FNPRM*).

[3] The "FY 2005 Revenue Estimate" column was adjusted for the FM Construction Permit service category from $53,900 to $267,300 to reflect the correct percentage revenue allocation for this service category before the 6.67% increase in fees was applied. In this same column and for the same reason, the UHF Construction Permit service category was adjusted from $53,475 to $192,950.

[4] Because of rounding, there are differences in the "Expected FY 2006 Revenue" column between the "Total Estimated Revenue to be Collected" and the "Total Revenue Requirement."

**Attachment D—FY 2006 Schedule of Regulatory Fees**

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 20 |
| Microwave (per license) (47 CFR part 101) | 85 |
| 218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 55 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 20 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 10 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 10 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 10 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 2.08 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .20 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27) | 275 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 275 |
| AM Radio Construction Permits | 395 |
| FM Radio Construction Permits | 575 |
| TV (47 CFR part 73) VHF Commercial: | |
| Markets 1–10 | 64,775 |
| Markets 11–25 | 47,775 |
| Markets 26–50 | 32,875 |
| Markets 51–100 | 20,450 |
| Remaining Markets | 5,025 |
| Construction Permits | 3,400 |
| TV (47 CFR part 73) UHF Commercial: | |
| Markets 1–10 | 20,750 |
| Markets 11–25 | 19,100 |
| Markets 26–50 | 10,975 |
| Markets 51–100 | 6,500 |
| Remaining Markets | 1,775 |
| Construction Permits | 1,775 |
| Satellite Television Stations (All Markets) | 1,150 |
| Construction Permits—Satellite Television Stations | 570 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 420 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 175 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .79 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00264 |
| Earth Stations (47 CFR part 25) | 215 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 111,425 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 120,225 |
| International Bearer Circuits (per active 64KB circuit) | 1.47 |
| International Public Fixed (per call sign) (47 CFR part 23) | 1,925 |
| International (HF) Broadcast (47 CFR part 73) | 820 |

FY 2006 radio station regulatory fees

| Population served | AM class A | AM class B | AM class C | AM class D | FM classes A, B1 & C3 | FM classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| <=25,000 | 625 | 500 | 400 | 475 | 575 | 750 |
| 25,001–75,000 | 1,225 | 950 | 600 | 725 | 1,150 | 1,325 |
| 75,001–150,000 | 1,850 | 1,200 | 800 | 1,200 | 1,575 | 2,450 |
| 150,001–500,000 | 2,775 | 2,025 | 1,200 | 1,425 | 2,450 | 3,200 |
| 500,001–1,200,000 | 4,000 | 3,100 | 2,000 | 2,375 | 3,875 | 4,700 |
| 1,200,001–3,000,00 | 6,150 | 4,750 | 3,000 | 3,800 | 6,325 | 7,500 |
| >3,000,000 | 7,375 | 5,700 | 3,800 | 4,750 | 8,050 | 9,750 |

**Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages**

*AM Stations*

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3 [2]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

*FM Stations*

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

**Attachment F—FY 2005 Schedule of Regulatory Fees**

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 10 |
| Microwave (per license) (47 CFR part 101) | 60 |
| 218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 50 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 10 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 5 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 5 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 15 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 2.19 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .22 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Multipoint Distribution Services (MMDS/MDS) (per license sign) (47 CFR part 21) | 255 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 255 |
| AM Radio Construction Permits | 310 |
| FM Radio Construction Permits | 550 |
| TV (47 CFR part 73) VHF Commercial: | |
| Markets 1–10 | 61,975 |
| Markets 11–25 | 44,675 |
| Markets 26–50 | 32,025 |
| Markets 51–100 | 18,800 |
| Remaining Markets | 4,625 |
| Construction Permits | 3,175 |
| TV (47 CFR part 73) UHF Commercial: | |
| Markets 1–10 | 20,025 |
| Markets 11–25 | 17,525 |
| Markets 26–50 | 10,050 |
| Markets 51–100 | 6,125 |
| Remaining Markets | 1,725 |
| Construction Permits | 1,725 |
| Satellite Television Stations (All Markets) | 1,075 |
| Construction Permits—Satellite Television Stations | 535 |
| Low Power TV, TV/FM Translators & Boosters (47 CFR part 74) | 395 |
| Broadcast Auxiliary (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 155 |

[1] 47 CFR 73.150 and 73.152.

[2] *See Map of Estimated Effective Ground Conductivity in the United States,* 47 CFR 73.190 Figure R3.

[3] 47 CFR 73.313.

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| Cable Television Systems (per subscriber) (47 CFR part 76) | .72 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00243 |
| Earth Stations (47 CFR part 25) | 205 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100) | 111,925 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 112,425 |
| International Bearer Circuits (per active 64KB circuit) | 1.37 |
| International Public Fixed (per call sign) (47 CFR part 23) | 1,800 |
| International (HF) Broadcast (47 CFR part 73) | 765 |

FY 2005 radio station regulatory fees

| Population served | AM class A | AM class B | AM class C | AM class D | FM classes A, B1 & C3 | FM classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| <=25,000 | 625 | 475 | 375 | 450 | 550 | 725 |
| 25,001—75,000 | 1,225 | 925 | 550 | 675 | 1,125 | 1,250 |
| 75,001—150,000 | 1,825 | 1,150 | 750 | 1,125 | 1,550 | 2,300 |
| 150,001—500,000 | 2,750 | 1,950 | 1,125 | 1,350 | 2,375 | 3,000 |
| 500,001—1,200,000 | 3,950 | 2,975 | 1,875 | 2,250 | 3,750 | 4,400 |
| 1,200,001—3,000,00 | 6,075 | 4,575 | 2,825 | 3,600 | 6,100 | 7,025 |
| >3,000,000 | 7,275 | 5,475 | 3,575 | 4,500 | 7,750 | 9,125 |

**Attachment G**

*Parties Filing Comments on the Notice of Proposed Rulemaking*

American Association of Paging Carriers (AAPC)

Apollo Submarine Cable System Ltd. (Apollo)

Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BloostonLaw)

Kenneth J. Brown (Brown)

National Cable & Telecommunications Association (NCTA)

USA Mobility, Inc. (USA Mobility)

*Parties Filing Reply Comments*

American Cable Association (ACA)

DIRECTV, Inc. and EchoStar Satellite (DirecTV & Echostar)

*Parties Filing a Notice of Oral Ex Parte Presentation*

National Cable & Telecommunications Association (NCTA)

DIRECTV, Inc. and EchoStar Satellite (DirecTV & Echostar)

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1152 is revised to read as follows:

**§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.**

| Exclusive use services (per license) | Fee amount [1] | Address |
|---|---|---|
| 1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90): | | |
| (a) New, Renew/Mod (FCC 601 & 159) | $20.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 220 MHz Nationwide | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 601 & 159) | 20.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 2. Microwave (47 CFR Pt. 101) (Private): | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 85.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 85.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 601 & 159) | 85.00 | FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 601 & 159) | 85.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 3. 218–219 MHz Service: | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 55.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) | 55.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 601 & 159) | 55.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 601 & 159) | 55.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 4. Shared Use Services: | | |
| Land Mobile (Frequencies Below 470 MHz—except 220 MHz):. | | |
| (a) New, Renew/Mod (FCC 601 & 159) | 10.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |

| Exclusive use services (per license) | Fee amount [1] | Address |
|---|---|---|
| (b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159) .... | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 601 & 159) ..... | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 601 & 159) ..... | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| General Mobile Radio Service | | |
| (a) New, Renew/Mod (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .... | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Rural Radio (Part 22). | | |
| (a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159). | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159). | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Marine Coast | | |
| (a) New Renewal/Mod (FCC 601 & 159) ..... | 20.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) Renewal Only (FCC 601 & 159) ..... | 20.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (c) Renewal Only (Electronic Filing) (FCC 601 & 159) ..... | 20.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Aviation Ground | | |
| (a) New, Renewal/Mod (FCC 601 & 159) ..... | 10.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) Renewal Only (FCC 601 & 159) ..... | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (c) Renewal Only (Electronic Filing) (FCC 601 & 159) ..... | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Marine Ship | | |
| (a) New, Renewal/Mod (FCC 605 & 159) ..... | 10.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159) | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 605 & 159) ..... | 10.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..... | 10.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Aviation Aircraft | | |
| (a) New, Renew/Mod (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130. |
| (b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159) .... | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| (c) Renewal Only (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245. |
| (d) Renewal Only (Electronic Filing) (FCC 605 & 159) ..... | 5.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 5. Amateur Vanity Call Signs: | | |
| (a) Initial or Renew (FCC 605 & 159) ..... | 2.08 | FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130 |
| (b) Initial or Renew (Electronic Filing) (FCC 605 & 159) ..... | 2.08 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| 6. CMRS Mobile Services (per unit) (FCC 159) ..... | .20 | FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 7. CMRS Messaging Services (per unit) (FCC 159) ..... | .08 | FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 8. Broadband Radio Service (formerly MMDS and MDS) ..... | 275 | FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 9. Local Multipoint Distribution Service ..... | 275 | FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102 of this chapter.

■ 3. Section 1.1153 is revised to read as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

| Radio [AM and FM] (47 CFR, Part 73) | Fee amount | Address |
|---|---|---|
| 1. AM Class A: | | |
| <=25,000 population ..... | $625 | FCC, Radio, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 25,001–75,000 population ..... | 1,225 | |
| 75,001–150,000 population ..... | 1,850 | |
| 150,001–500,000 population ..... | 2,775 | |
| 500,001–1,200,000 population ..... | 4,000 | |
| 1,200,001–3,000,000 population ..... | 6,150 | |
| >3,000,000 population ..... | 7,375 | |
| 2. AM Class B: | | |
| <=25,000 population ..... | 500 | |
| 25,001–75,000 population ..... | 950 | |
| 75,001–150,000 population ..... | 1,200 | |
| 150,001–500,000 population ..... | 2,025 | |
| 500,001–1,200,000 population ..... | 3,100 | |
| 1,200,001–3,000,000 population ..... | 4,750 | |
| >3,000,000 population ..... | $5,700 | |
| 3. AM Class C: | | |
| <=25,000 population ..... | 400 | |
| 25,001–75,000 population ..... | 600 | |
| 75,001–150,000 population ..... | 800 | |
| 150,001–500,000 population ..... | 1,200 | |
| 500,001–1,200,000 population ..... | 2,000 | |
| 1,200,001–3,000,000 population ..... | 3,000 | |

| Radio [AM and FM] (47 CFR, Part 73) | Fee amount | Address |
|---|---|---|
| >3,000,000 population | 3,800 | |
| 4. AM Class D: | | |
| <=25,000 population | 475 | |
| 25,001–75,000 population | 725 | |
| 75,001–150,000 population | 1,200 | |
| 150,001–500,000 population | 1,425 | |
| 500,001–1,200,000 population | 2,375 | |
| 1,200,001–3,000,000 population | 3,800 | |
| >3,000,000 population | 4,750 | |
| 5. AM Construction Permit | 395 | |
| 6. FM Classes A, B1 and C3: | | |
| <=25,000 population | 575 | |
| 25,001–75,000 population | 1,150 | |
| 75,001–150,000 population | 1,575 | |
| 150,001–500,000 population | 2,450 | |
| 500,001–1,200,000 population | 3,875 | |
| 1,200,001–3,000,000 population | 6,325 | |
| >3,000,000 population | 8,050 | |
| 7. FM Classes B, C, C0, C1 and C2: | | |
| <=25,000 population | 750 | |
| 25,001–75,000 population | 1,325 | |
| 75,001–150,000 population | 2,450 | |
| 150,001–500,000 population | 3,200 | |
| 500,001–1,200,000 population | 4,700 | |
| 1,200,001–3,000,000 population | 7,500 | |
| >3,000,000 population | 9,750 | |
| 8. FM Construction Permits | 575 | |
| **TV (47 CFR, Part 73) VHF Commercial** | | |
| 1. Markets 1 thru 10 | 64,775 | FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835. |
| 2. Markets 11 thru 25 | 47,775 | |
| 3. Markets 26 thru 50 | 32,875 | |
| 4. Markets 51 thru 100 | 20,450 | |
| 5. Remaining Markets | 5,025. | |
| 6. Construction Permits | 3,400 | |
| **UHF Commercial** | | |
| 1. Markets 1 thru 10 | 20,750 | FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. Markets 11 thru 25 | 19,100 | |
| 3. Markets 26 thru 50 | 10,975 | |
| 4. Markets 51 thru 100 | 6,500 | |
| 5. Remaining Markets | 1,775 | |
| 6. Construction Permits | 1,775 | |
| **Satellie UHF/VHF Commercial** | | |
| 1. All Markets | 1,150 | FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835. |
| 2. Construction Permits | 570 | |
| Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74). | 420 | FCC, Low Power, P.O. Box 358835, Pittsburgh, PA, 15241–5835. |
| Broadcast Auxiliary | 10 | FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

■ 4. Section 1.1154 is revised to read as follows:

**§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.**

| | Fee amount | Address |
|---|---|---|
| Radio Facilities: | | |
| 1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159). | $85.00 | FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994. |
| Carriers: | | |

| | Fee amount | Address |
|---|---|---|
| 1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A). | $ .00264 | FCC, Carriers, Box 358835, Pittsburgh, PA, 15251–5835. |

■ 5. Section 1.1155 is revised to read as follows:

**§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.**

| | Fee amount | Address |
|---|---|---|
| 1. Cable Television Relay Service | $175 | FCC, Cable , P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. Cable TV System (per subscriber) | .79 | |

■ 6. Section 1.1156 is revised to read as follows:

**§ 1.1156 Schedule of regulatory fees and filing locations for international services.**

| | Fee amount | Address |
|---|---|---|
| Radio Facilities: | | |
| 1. International (HF) | 820 | FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| 2. International Public Fixed | 1,925 | FCC, International, Fixed P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Space Stations (Geostationary Orbit) | 111,425 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Space Stations (Non-Geostationary Orbit) | 120,225 | FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Earth Stations | 215 | FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| Transmit/Receive & | | |
| Transmit Only (per authorization or registration) | | |
| Carriers | 1.47 | FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |
| International Bearer Circuits | | |
| (per active 64KB circuit or equivalent) | | |

7. Section 1.1162 is amended by revising paragraphs (e) through (h) to read as follows:

**§ 1.1162 General exemptions from regulatory fees.**

* * * * *

(e) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their NCE broadcast station on an NCE basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a NCE or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as an NCE station, is exempt from fees for broadcast auxiliary stations (subparts D, E, F, and G of part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the NCE translator or low power station.

(h) An applicant, permittee or licensee that is the licensee in the Educational Broadband Service (EBS) (formerly, Instructional Television Fixed Service (ITFS)) (parts 27 and 74, *e.g.*, §§ 27.1200, *et seq.*, and 74.832(b), of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the EBS.

* * * * *

**Note:** The following statements will not appear in the Code of Federal Regulations.

**Concurring Statement of Commissioner Michael J. Copps**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order in MD Docket No 06–68*

I concur in today's item to emphasize my long-held and oft-repeated belief that the Commission should consider opening a rulemaking to address the adjustment of regulatory fees pursuant

to section 9(b)(3) of the Act. In a rapidly-evolving communications marketplace, we need to look for ways to ensure that our regulatory fee methodologies continue to reflect the industries we regulate.

**Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part**

*Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order in MD Docket No. 06–68*

As in years past, I must concur to portions of our Regulatory Fee Order because I remain troubled with the Commission's inability and reluctance to consider changes that undoubtedly occur from time to time in the costs of regulatory fees for individual services. I encourage the Commission to continue to improve its regulatory fee assessment processes so that in the future we are more able to make these adjustments as appropriate.

[FR Doc. 06–6582 Filed 8–1–06; 8:45 am]

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Federal Register

Wednesday,
August 2, 2006

## Part III

# Office of Personnel Management

**5 CFR Part 591**

**Nonforeign Area Cost-of-Living Allowances—Revised Living-Cost Indexes and COLA Rate Change; Notice and Final Rule**

## OFFICE OF PERSONNEL MANAGEMENT

### Nonforeign Area Cost-of-Living Allowances; Revised Living-Cost Indexes

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This notice publishes revised living-cost indexes relating to the ''2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas;'' the ''2003 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Washington, DC, Areas;'' and the ''2004 Nonforeign Area Cost-of-Living Allowance Survey Report: Pacific and Washington, DC, Areas.'' The Federal Government uses the results of these surveys to set cost-of-living allowance (COLA) rates for General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The Office of Personnel Management revised the COLA area living-cost indexes based on additional rental data analyses undertaken after the publication of these reports in response to comments we received.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

**SUPPLEMENTARY INFORMATION:** Section 5941 of title 5, United States Code, authorizes Federal agencies to pay nonforeign area cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer COLAs and prescribes certain operational features of the program. We conduct living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. We set the COLA rate for each area based on the results of these surveys.

Section 591.229 of title 5, Code of Federal Regulations, requires OPM to publish COLA survey summary reports in the **Federal Register**. On February 9, 2004, OPM published the ''2002 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas'' at 69 FR 6020. On March 12, 2004, OPM published the ''2003 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Washington, DC, Areas'' at 69 FR 12002. On August 4, 2005, OPM published the ''2004 Nonforeign Area Cost-of-Living Allowance Survey Report: Pacific and Washington, DC, Areas'' at 70 FR 44989. OPM also published on August 4, 2005, a notice on revised shelter (rent) analyses at 70 FR 44978 and a proposed rule on COLA rate changes at 70 FR 44976.

As described in the reports, OPM conducts living-cost surveys in each of the COLA areas and in the Washington, DC, area and compares living-costs between the COLA areas and the DC area to set COLA rates. As also described in the reports, we survey rents in both the COLA areas and DC areas to compute the relative cost of shelter. OPM typically collects over 1,000 rental observations in each survey and also obtains information on over 80 characteristics of each of the rental observations.

Because housing can differ significantly within and between areas, OPM uses hedonic regressions (a type of multiple regression) to compare rents while holding quality and quantity constant. The rent comparisons are in the form of rent indexes, and the survey reports described the hedonic regression equations we use to compute rent indexes. The reports did not describe, however, how OPM selects the variables it uses in the hedonic regressions, and it is this process that OPM changed in response to comments it received.

To develop the process and its recent refinement, OPM consulted with the Survey Implementation Committee (SIC) and the Technical Advisory Committee (TAC). The SIC was established under the stipulation of settlement in *Caraballo et al.* v. *United States,* No. 1997–0027 (D.V.I), August 17, 2000, and is composed of representatives of the parties in *Caraballo.* The SIC in turn consults with the TAC, which was also established under the *Caraballo* settlement and is composed of three economists with expertise in living-cost comparisons. One of the issues OPM consulted with the SIC and TAC about is how to select defensible and objective variables for the rental hedonic regressions.

For the proposed rule, OPM used a multi-step process developed in consultation with the SIC and the TAC. The first step in the process was to identify ''core'' variables (*e.g.*, number of bedrooms, number of bathrooms, and square footage). Core variables we use are consistently highly significant in our joint research, and we use them in all of our hedonic rental regression models.

The remaining variables are the ''non-core'' variables. In the process we used, statistically insignificant non-core variables were dropped from the hedonic regressions. OPM dropped non-core variables that were not statistically significant from the hedonic regressions. We did this in a series of steps, sequentially increasing the threshold for the significance tests because dropping variables could affect the significance of other variables. In the end, OPM had a hedonic regression model with a limited number of variables, each of which were highly significant (i.e., had a Type III probability of F less than or equal to 0.001).

In response to comments received on the proposed rule (and as described in the final rule accompanying this notice), OPM performed additional hedonic regressions (e.g., added listing source). Using the process described in the paragraph above. After comparing the results of the new regressions with those we proposed, the TAC recommended adding additional steps in the selection of variables for the hedonic regressions. These additional steps involved examining the effect of non-core variables on the standard errors of the survey area parameters.

As explained in the survey reports, the survey area parameter estimates, when converted from logarithms and after a slight correction for the use of logarithms, become the rent indexes. The standard errors of the survey area parameter estimates are a measure of the precision of the estimates, i.e., a measure of the precision of the rent index. The additional steps recommended by the TAC involved examining the effect of non-core variables on standard errors and deleting non-core variables that increased the standard errors. In other words, in these last steps, OPM removed variables whose inclusion would otherwise make the rent index less precise.

The additional steps resulted in fewer variables compared to the regressions OPM published in the previous notices. We also corrected errors in the 2002, 2003, and 2004 data bases. We uncovered some of the errors as a result of new automated quality assurance software we developed after we published these surveys. We uncovered other errors as we researched the comments on the proposed rule. We made the corrections to the data bases and used the new hedonic regression procedures recommended by the TAC. The new regressions for 2002, 2003, and

2004 are in Appendices 1, 2, and 3 respectively of this notice. Both the previously published and new rent indexes are shown in Table 1 below.

TABLE 1.—PREVIOUSLY PUBLISHED AND FINAL RENT INDEXES

| Year | Area | Previous rent index | New rent index |
|---|---|---|---|
| 2002 | Puerto Rico | 70.89 | 63.49 |
| 2002 | St. Croix, USVI | 71.71 | 69.51 |
| 2002 | St. Thomas/St. John, USVI | 88.63 | 88.37 |
| 2003 | Anchorage, Alaska | 89.99 | 89.46 |
| 2003 | Fairbanks, Alaska | 79.96 | 79.98 |
| 2003 | Juneau, Alaska | 91.68 | 91.90 |
| 2004 | Honolulu, HI | 132.21 | 125.85 |
| 2004 | Hilo, HI | 81.19 | 74.97 |
| 2004 | Kailua Kona\Waimea Area, HI | 106.75 | 101.35 |
| 2004 | Kauai, HI | 117.61 | 108.15 |
| 2004 | Maui, HI | 127.62 | 118.00 |
| 2004 | Guam | 89.52 | 88.72 |
| | Washington, DC, Area | *100.00 | *100.00 |

*By definition, the index of the base area is always 100.00. OPM surveys the Washington, DC, area every year.

Using the new rent indexes, OPM computed new final overall COLA indexes. Table 2 shows the new final indexes. Appendix 4 to this notice shows the derivation of the new Caribbean final indexes. Appendix 5 shows the derivation of the new Alaska final indexes. Appendix 6 shows the derivation of the new Pacific final indexes.

TABLE 2.—PREVIOUS PUBLISHED AND FINAL LIVING-COST INDEXES

| Allowance area/category | Previously published living-cost indexes | Revised living-cost indexes |
|---|---|---|
| Puerto Rico | 105.10 | 103.04 |
| U.S. Virgin Islands | 122.84 | 122.53 |
| Anchorage, Alaska | 113.79 | 113.64 |
| Fairbanks, Alaska | 115.61 | 115.62 |
| Juneau, Alaska | 118.03 | 118.09 |
| Rest of the State of Alaska | 136.00 | 135.84 |
| Honolulu County, Hawaii | 127.78 | 125.80 |
| Hawaii County, Hawaii | 119.11 | 117.25 |
| Kauai County, Hawaii | 130.58 | 127.63 |
| Maui County, Hawaii | 134.49 | 131.50 |
| Guam and the Northern Mariana Islands | 127.65 | 127.40 |

These are the indexes that are used in the final rule to produce the final COLA rates for each of the COLA areas.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

## Appendix 1—2002 Caribbean Survey; Hedonic Rental Data Equations and Results

```
libname opm
  'p:\swsd\cola\survey2002\rental
  data\data files\';
data temp;
set opm.QC_2002_Corrections_less_garages;
survey_area = 'XX';
location = substr(compnumber,1,1);
if location = 'A' then survey_area = 'SC';
if location = 'B' then survey_area = 'ST';
if location = 'C' then survey_area = 'PR';
if location = 'D' then survey_area = 'DC';
*Drop 6 Georgetown zip code observations
  from data;
if int(compzip) = 20007 then delete;
IF COMPNUMBER = 'CHC08' then delete;
*Q1 yrbuilt;
age = 2002-yrbuilt;
agesq = age**2;
if age<0 then delete;
if age = >200 then delete;
baths = fullbaths + halfbaths*.5 +
  threeqtrbaths*.75;
Neighbor_cond = 0;
if neighcond = 'A' then Neighbor_cond = 1;
  * (Desirable);
DetTownRow = 0;
*if unittype in ('A' 'D') then DetTownRow =
  1;
*Omitting the line above makes
  DetTownRow the base condition;
Apt_Other_Dup = 0;
if unittype in ('B' 'C' 'E' 'H') then
  Apt_Other_Dup = 1;
HighRise_Walkup = 0;
if unittype in ('F' 'G') then HighRise_Walkup
  = 1;
SqftXHighRise_Walkup = 0;
if unittype in ('F','G') then
  SqftXHighRise_Walkup = sqfootage;
SqftXApt_Other_Dup = 0;
if unittype in ('B' 'C' 'E' 'H') then
  SqftXApt_Other_Dup = sqfootage;
SqftXDetTownRow = 0;
if unittype in ('A','D') then
  SqftXDetTownRow = sqfootage;
hasmicrowave = 0;
if microwave = 'Y' then hasmicrowave = 1;
hassecurity = 0;
if gated = 'Y' or accessctl = 'Y' or guards =
  'Y' or alarms = 'Y' then hassecurity = 1;
hasgarage = 0;
if garage in ('A' 'B' 'C') then hasgarage = 1;
ST_CROIX = 0;
if survey_area = 'SC' then ST_CROIX = 1;
ST_THOMAS = 0;
if survey_area = 'ST' then ST_THOMAS = 1;
Puerto_Rico = 0;
if survey_area = 'PR' then Puerto_Rico = 1;
Wash_DC = 0;
*** if survey_area = 'WA' then Wash_DC =
  1—Omitting this makes DC the base area;
lrent = log(rent);
run;
PROC REG DATA = temp;
```

```
MODEL lrent = SqftXHighRise_Walkup
  SqftXApt_Other_Dup SqftXDetTownRow
  age agesq baths bedrooms Apt_Other_Dup
  HighRise_Walkup neighbor_cond
  hasmicrowave hassecurity ST_CROIX
  ST_THOMAS Puerto_Rico;
Title1 '2002 CARIBBEAN RENTAL DATA';
Title2 'REVISED RENTAL ANALYSIS WITH
  CORRECTED DATA FEDERAL REGISTER
  MODEL';
run;
```

2002 CARIBBEAN RENTAL DATA.—REVISED RENTAL ANALYSIS WITH CORRECTED DATA FEDERAL REGISTER MODEL

[The REG Procedure Dependent Variable: lrent]

| | |
|---|---|
| Number of Observations Read | 1591 |
| Number of Observations Used | 1591 |

Analysis of variance

| Source | DF | Sum of squares | Mean square | F Value | Pr > F |
|---|---|---|---|---|---|
| Model | 15 | 334.69800 | 22.31320 | 461.64 | <.0001 |
| Error | 1575 | 76.12753 | 0.04833 | | |
| Corrected Total | 1590 | 410.82553 | | | |

| | | | |
|---|---|---|---|
| Root MSE | 0.21985 | R-Square | 0.8147 |
| Dependent Mean | 7.03485 | Adj R-Sq | 0.8129 |
| Coeff Var | 3.12518 | | |

| Variable | DF | Parameter estimate | Standard error | t Value | Pr > \|t\| |
|---|---|---|---|---|---|
| Intercept | 1 | 6.59523 | 0.03803 | 173.44 | <.0001 |
| SqftXHighRise_Walkup | 1 | 0.00056133 | 0.00004296 | 13.07 | <.0001 |
| SqftXApt_Other_Dup | 1 | 0.00071946 | 0.00004765 | 15.10 | <.0001 |
| SqftXDetTownRow | 1 | 0.00024384 | 0.00001964 | 12.42 | <.0001 |
| age | 1 | −0.00384 | 0.00069696 | −5.51 | <.0001 |
| agesq | 1 | 0.00006036 | 0.00000759 | 7.95 | <.0001 |
| baths | 1 | 0.10998 | 0.01193 | 9.22 | <.0001 |
| BEDROOMS | 1 | 0.03593 | 0.01042 | 3.45 | 0.0006 |
| Apt_Other_Dup | 1 | −0.60421 | 0.05066 | −11.93 | <.0001 |
| HighRise_Walkup | 1 | −0.40358 | 0.04816 | −8.38 | <.0001 |
| Neighbor_cond | 1 | 0.23154 | 0.01458 | 15.88 | <.0001 |
| hasmicrowave | 1 | 0.12859 | 0.01456 | 8.83 | <.0001 |
| hassecurity | 1 | 0.08879 | 0.01375 | 6.46 | <.0001 |
| ST_CROIX | 1 | −0.37738 | 0.02727 | −13.84 | <.0001 |
| ST_THOMAS | 1 | −0.13664 | 0.02605 | −5.25 | <.0001 |
| Puerto_Rico | 1 | −0.46246 | 0.01636 | −28.26 | <.0001 |

## Appendix 2—2003 Alaska Survey; Hedonic Rental Data Equations and Results

```
libname opm 'P:\SWSD\COLA\Survey
  2003\Rental Data\SAS Files & programs\
  SAS rental data sets';
data temp; set OPM.qc_2003_corrections_
  less_garages;
survey_area = 'XX';
location = substr(compnumber,1,1);
if location = 'A' then survey_area = 'JU';
if location = 'B' then survey_area = 'FB';
if location = 'C' then survey_area = 'AN';
if location = 'D' then survey_area = 'DC';
*Q1 yrbuilt;
age = 2003-yrbuilt;
agesq = age**2;
baths = fullbaths+halfbaths*.5
  +threeqtrbaths*.75;
Neighbor_Cond = 0;
if neighcond = 'A' then Neighbor_Cond = 1;
hasgarage = 0;
if garage in ('A' 'B' 'C') then hasgarage = 1;
Dup_Othr = 0;
if unittype in ('B' 'C' 'E' 'H') then Dup_Othr
  = 1;
Wlkp_HiRz = 0;
if unittype in ('F' 'G') then Wlkp_HiRz = 1;
DetTownRow = 0;
*if unittype in ('A' 'D') then DetTownRow =
  1;
*omitting the above line makes DetTownRow
  the base condition;
SqftXDup_Othr = 0;
if unittype in ('B' 'C' 'E' 'H') then
  SqftXDup_Othr = sqfootage;
SqftXWlkp_HiRz = 0;
if unittype in ('F' 'G') then SqftXWlkp_HiRz
  = sqfootage;
SqftXDetTownRow = 0;
if unittype in ('A' 'D') then
  SqftXDetTownRow = sqfootage;
hasclothesdryer = 0;
if cldryer = 'Y' then hasclothesdryer = 1;
hasfireplace = 0;
if fireplace = 'Y' then hasfireplace = 1;
Anchorage = 0;
if survey_area = 'AN' then Anchorage = 1;
Fairbanks = 0;
if survey_area = 'FB' then Fairbanks = 1;
Juneau = 0;
if survey_area = 'JU' then Juneau = 1;
Wash_DC = 0;
*** if survey_area = 'WA' then Wash_DC= =
  1—Omitting this makes DC the base area;
pctallbasq = pctallba_**2;
mediansq = medianincome**2;
lrent = log(rent);
run;
PROC REG DATA = temp;
MODEL lrent = Dup_Othr Wlkp_HiRz
  SqftXDup_Othr SqftXWlkp_HiRz
  SqftXDetTownRow age agesq baths
  bedrooms Neighbor_Cond hasgarage
  hasclothesdryer hasfireplace
  medianincome mediansq pctallbasq
  pctallba_ PctSchoolAge Anchorage
  Fairbanks Juneau;
TITLE '2003 Alaskan Rental Data';
Title2'Revised Rental Analyses with
  Corrected Data Federal Register Model';
RUN;
```

2003 ALASKAN RENTAL DATA.—REVISED RENTAL ANALYSES WITH CORRECTED DATA FEDERAL REGISTER MODEL

[The REG Procedure Dependent Variable: lrent]

| | |
|---|---|
| Number of Observations Read | 1668 |
| Number of Observations Used | 1668 |

Analysis of Variance

| Source | DF | Sum of squares | Mean square | F Value | Pr > F |
|---|---|---|---|---|---|
| Model | 21 | 213.03988 | 10.14476 | 401.58 | <.0001 |
| Error | 1646 | 41.58122 | 0.02526 | | |
| Corrected Total | 1667 | 254.62110 | | | |

| | | | |
|---|---|---|---|
| Root MSE | 0.15894 | R-Square | 0.8367 |
| Dependent Mean | 7.07009 | Adj R-Sq | 0.8346 |
| Coeff Var | 2.24807 | | |

| Variable | DF | Parameter estimate | Standard error | t Value | Pr > \|t\| |
|---|---|---|---|---|---|
| Intercept | 1 | 6.81582 | 0.04483 | 152.03 | <.0001 |
| Dup_Othr | 1 | −0.09774 | 0.04706 | −2.08 | 0.0380 |
| Wlkp_HiRz | 1 | −0.30134 | 0.03542 | −8.51 | <.0001 |
| SqftXDup_Othr | 1 | 0.00012700 | 0.00003434 | 3.70 | 0.0002 |
| SqftXWlkp_HiRz | 1 | 0.00027339 | 0.00003183 | 8.59 | <.0001 |
| SqftXDetTownRow | 1 | 0.00006988 | 0.00001603 | 4.36 | <.0001 |
| age | 1 | −0.00435 | 0.00068425 | −6.36 | <.0001 |
| agesq | 1 | 0.00005845 | 0.00000820 | 7.12 | <.0001 |
| baths | 1 | 0.06396 | 0.00916 | 6.98 | <.0001 |
| BEDROOMS | 1 | 0.11464 | 0.00768 | 14.93 | <.0001 |
| Neighbor_Cond | 1 | 0.28518 | 0.03963 | 7.20 | <.0001 |
| hasgarage | 1 | 0.12415 | 0.01103 | 11.26 | <.0001 |
| hasclothesdryer | 1 | 0.05988 | 0.00887 | 6.75 | <.0001 |
| hasfireplace | 1 | 0.04929 | 0.01024 | 4.81 | <.0001 |
| MedianIncome | 1 | −0.00000236 | 9.087546E–7 | −2.60 | 0.0094 |
| mediansq | 1 | 2.23567E–11 | 5.52092E–12 | 4.05 | <.0001 |
| pctallbasq | 1 | 0.12714 | 0.11737 | 1.08 | 0.2788 |
| PCTAllBA_ | 1 | 0.26181 | 0.10972 | 2.39 | 0.0171 |
| PctSchoolAge | 1 | −0.84487 | 0.11140 | −7.58 | <.0001 |
| Anchorage | 1 | −0.11739 | 0.01201 | −9.77 | <.0001 |
| Fairbanks | 1 | −0.23032 | 0.01376 | −16.73 | <.0001 |
| Juneau | 1 | −0.09326 | 0.01763 | −5.29 | <.0001 |

**Appendix 3.—2004 Pacific Survey; Hedonic Rental Data Equations and Results**

```
libname opm 'P:\SWSD\COLA\Survey 2004 Rental Data\Sas Files & Programs\SAS rental data sets\'; data temp;
set OPM.qc_2004_corrections_less_garages;
*following corrects for excise tax not included in Kona apt rents;
if compnumber in ('CEE07', 'CED08', 'CAE01', 'CAF01', 'CEB19', 'CEC05', 'CEB16', 'CEA01', 'CEB13', 'CEF04', 'CDB06', 'CEF09', 'CEF19', 'CEA03', 'CEA06', 'CEE19', 'CEB33', 'CEC10', 'CEE20', 'CEB24', 'CEB37', 'CEB31', 'CEC11', 'CEE09', 'CEE21', 'CEF02', 'CEB09', 'CEB10', 'CEE05', 'CEE11', 'CEB08', 'CED01', 'CEE05', 'CEF12', 'CED03', 'CEB07', 'CEC01', 'CEB27', 'CEC03') then rent = rent*1.0416;
survey_area = 'XX';
location = substr(compnumber,1,1);
if location = 'A' then survey_area = 'GU';
if location = 'B' then survey_area = 'KA';
if location = 'C' then survey_area = 'KO';
if location = 'D' then survey_area = 'HI';
if location = 'E' then survey_area = 'MA';
if location = 'F' then survey_area = 'HO';
if location = 'G' then survey_area = 'DC';
age = 2004-yrbuilt;
agesq = age*age;
baths = fullbaths+halfbaths*.5+three qtrbaths*.75;
Extrnl_Cond = 0;
if extrcond = 'A' then Extrnl_Cond = 1;
Neighbor_Cond = 0;
if neighcond = 'A' then Neighbor_Cond = 1;
hasgarage = 0;
if garage in ('A' 'B' 'C') then hasgarage = 1;
exceptional_view = 0;
if excview = 'Y' then exceptional_view = 1;
hassecurity = 0;
if gated = 'Y' or accessctl = 'Y' or guards = 'Y' or alarms = 'Y' then hassecurity = 1;
Dup_Tri_InHome = 0;
if unittype in ('B','C','E') then Dup_Tri_InHome = 1;
Wlkp_Highrise = 0;
if unittype in ('F','G') then Wlkp_Highrise = 1;
DetTownRow = 0;
*if unittype in ('A' 'D') then DetTownRow = 1;
*omitting the above makes it the base condition;
SqftXDup_Tri_InHome = 0;
if unittype in ('B' 'C' 'E') then SqftXDup_Tri_InHome = sqfootage;
SqftXWlkp_Highrise = 0;
if unittype in ('F' 'G') then SqftXWlkp_Highrise = sqfootage;
SqftXDetTownRow = 0;
if unittype in ('A' 'D') then SqftXDetTownRow = sqfootage;
hasclothesdryer = 0;
if cldryer = 'Y' then hasclothesdryer = 1;
hasrecreation = 0;
if pool = 'Y' or tenniscourt = 'Y' or clubhouse = 'Y' or exerciseroom = 'Y' or otherrecfac = 'Y' then hasrecreation = 1;
haselectric = 0;
if elec = 'Y' then haselectric = 1;
heatedgarage = 0;
if hgarage = 'Y' then heatedgarage = 1;
sqfootagesq = sqfootage**2;
pctallbasq = pctallba_**2;
Honolulu = 0;
```

```
if survey_area = 'HO' then Honolulu = 1;
Hilo = 0;
if survey_area = 'HI' then Hilo = 1;
Kona = 0;
if survey_area = 'KO' then Kona = 1;
Kauai = 0;
if survey_area = 'KA' then Kauai = 1;
Maui = 0;
if survey_area = 'MA' then Maui = 1;
Guam = 0;
if survey_area = 'GU' then Guam = 1;
Wash_DC = 0;
*** if survey_area = 'WA' then Wash_DC =
  1 Omitting this makes DC the base area;
  lrent = log(rent);
run;
PROC REG DATA = temp;
MODEL lrent = SqftXDup_Tri_InHome
  SqftXWlkp_Highrise SqftXDetTownRow
  age agesq baths bedrooms haselectric
  heatedgarage Dup_Tri_InHome Wlkp_
  Highrise Extrnl_Cond Neighbor_Cond
  hasgarage exceptional_view
  hasclothesdryer hasrecreation PctallBA_
  PctallBAsq PctSchoolAge Honolulu Hilo
  Kona Kauai Maui Guam;
TITLE1 '2004 PACIFIC RENTAL DATA';
Title2 'RENTAL ANALYSIS FEDERAL
  REGISTER MODEL';
RUN;
```

2004 PACIFIC RENTAL DATA.—RENTAL ANALYSIS FEDERAL REGISTER MODEL

[The REG Procedure Dependent Variable: lrent]

| | |
|---|---|
| Number of Observations Read | 2713 |
| Number of Observations Used | 2713 |

Analysis of Variance

| Source | DF | Sum of squares | Mean square | F Value | Pr > F |
|---|---|---|---|---|---|
| Model | 26 | 379.89750 | 14.61144 | 394.69 | <.0001 |
| Error | 2686 | 99.43664 | | | |
| Corrected Total | 2712 | 479.33414 | | | |

| | | | |
|---|---|---|---|
| Root MSE | 0.19241 | R-Square | 0.7926 |
| Dependent Mean | 7.18883 | Adj R-Sq | 0.7905 |
| Coeff Var | 2.67647 | | |

| Variable | DF | Parameter estimate | Standard error | t Value | Pr > t |
|---|---|---|---|---|---|
| Intercept | 1 | 6.71644 | 0.03879 | 173.14 | <.0001 |
| SqftXDup_Tri_InHome | 1 | 0.00027535 | 0.00003241 | 8.50 | <.0001 |
| SqftXWlkp_Highrise | 1 | 0.00040841 | 0.00002703 | 15.11 | <.0001 |
| SqftXDetTownRow | 1 | 0.00011596 | 0.00001498 | 7.74 | <.0001 |
| age | 1 | −0.00247 | 0.00054994 | −4.50 | <.0001 |
| agesq | 1 | 0.00003635 | 0.00000640 | 5.68 | <.0001 |
| baths | 1 | 0.08769 | 0.00831 | 10.55 | <.0001 |
| BEDROOMS | 1 | 0.10540 | 0.00744 | 14.16 | <.0001 |
| haselectric | 1 | 0.08951 | 0.01199 | 7.46 | <.0001 |
| heatedgarage | 1 | 0.20487 | 0.05953 | 3.44 | 0.0006 |
| Dup_Tri_InHome | 1 | −0.27216 | 0.03742 | −7.27 | <.0001 |
| Wlkp_Highrise | 1 | −0.46694 | 0.02793 | −16.72 | <.0001 |
| Extrnl_Cond | 1 | 0.09677 | 0.01459 | 6.63 | <.0001 |
| Neighbor_Cond | 1 | 0.19095 | 0.01675 | 11.40 | <.0001 |
| hasgarage | 1 | 0.06508 | 0.01109 | 5.87 | <.0001 |
| exceptional_view | 1 | 0.08748 | 0.01923 | 4.55 | <.0001 |
| hasclothesdryer | 1 | 0.06394 | 0.00838 | 7.63 | <.0001 |
| hasrecreation | 1 | 0.08545 | 0.01041 | 8.21 | <.0001 |
| PCTAllBA_ | 1 | 0.00112 | 0.09969 | 0.01 | 0.9910 |
| pctallbasq | 1 | 0.55655 | 0.10981 | 5.07 | <.0001 |
| PctSchoolAge | 1 | −0.79399 | 0.09062 | −8.76 | <.0001 |
| Honolulu | 1 | 0.22418 | 0.01153 | 19.44 | <.0001 |
| Hilo | 1 | −0.29661 | 0.01715 | −17.29 | <.0001 |
| Kona | 1 | 0.00390 | 0.01905 | 0.20 | 0.8379 |
| Kauai | 1 | 0.06919 | 0.01828 | 3.79 | 0.0002 |
| Maui | 1 | 0.15740 | 0.01628 | 9.67 | <.0001 |
| Guam | 1 | −0.12739 | 0.01530 | −8.33 | <.0001 |

## APPENDIX 4.—2002 FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| **Puerto Rico** | | | | | |
| 1. Food | | 13.16 | | | 101.85 |
| | Cereals and bakery products | 0.98 | 7.45 | 105.91 | |
| | Meats, poultry, fish, and eggs | 1.47 | 11.16 | 99.40 | |

APPENDIX 4.—2002 FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Dairy products | 0.65 | 4.94 | 124.86 | |
| | Fruits and vegetables | 0.73 | 5.56 | 107.05 | |
| | Processed foods | 1.54 | 11.68 | 106.42 | |
| | Other food at home | 0.42 | 3.16 | 92.62 | |
| | Nonalcoholic beverages | 0.49 | 3.74 | 133.21 | |
| | Food away from home | 5.93 | 45.04 | 91.91 | |
| | Alcoholic beverages | 0.96 | 7.28 | 123.96 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 31.30 | | | 78.63 |
| | Shelter | 28.07 | 89.67 | 64.56 | |
| | Energy utilities | 2.65 | 8.46 | 236.07 | |
| | Water and other public services | 0.59 | 1.87 | 41.54 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.06 | | | 98.84 |
| | Household operations | 1.36 | 22.51 | 64.95 | |
| | Housekeeping supplies | 1.06 | 17.53 | 113.20 | |
| | Textiles and area rugs | 0.25 | 4.16 | 93.40 | |
| | Furniture | 1.05 | 17.39 | 95.70 | |
| | Major appliances | 0.37 | 6.03 | 116.32 | |
| | Small appliances, misc. housewares | 0.21 | 3.46 | 108.32 | |
| | Miscellaneous household equipment | 1.75 | 28.91 | 114.40 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and services | | 4.00 | | | 112.80 |
| | Men and boys | 0.75 | 18.69 | 107.05 | |
| | Women and girls | 1.67 | 41.66 | 114.32 | |
| | Children under 2 | 0.18 | 4.55 | 103.86 | |
| | Footwear | 0.70 | 17.48 | 88.96 | |
| | Other apparel products and services. | 0.71 | 17.63 | 141.24 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.93 | | | 107.51 |
| | Motor vehicle costs | 9.09 | 53.67 | 109.17 | |
| | Gasoline and motor oil | 2.71 | 16.02 | 84.24 | |
| | Maintenance and repairs | 1.81 | 10.72 | 94.31 | |
| | Vehicle insurance | 1.73 | 10.24 | 122.13 | |
| | Public transportation | 1.58 | 9.35 | 136.92 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.44 | | | 73.31 |
| | Health insurance | 2.08 | 46.97 | 59.73 | |
| | Medical services | 1.43 | 32.31 | 72.76 | |
| | Drugs and medical supplies | 0.92 | 20.72 | 104.93 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 6.23 | | | 102.99 |
| | Fees and admissions | 1.46 | 23.38 | 95.96 | |
| | Television, radios, sound equipment | 0.77 | 12.38 | 115.85 | |
| | Pets, toys, and playground equipment. | 1.15 | 18.48 | 98.43 | |
| | Other entertainment supplies, etc. | 0.97 | 15.57 | 106.71 | |
| | Personal care products | 0.69 | 11.10 | 98.89 | |
| | Personal care services | 0.70 | 11.29 | 105.17 | |
| | Reading | 0.49 | 7.80 | 109.76 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.09 | | | 132.89 |
| | Education | 0.21 | 5.06 | 216.35 | |
| | Communications | 3.24 | 79.32 | 132.97 | |
| | Computers and computer services | 0.64 | 15.62 | 105.41 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 13.79 | | | 103.10 |
| | Tobacco products, etc. | 0.48 | 3.51 | 87.91 | |
| | Miscellaneous | 2.09 | 15.12 | 123.28 | |
| | Personal insurance and pensions | 11.22 | 81.37 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.00 | | | 96.04 |
| Plus Adjustment Factor | | | | | 7.00 |
| Index Plus Adjustment Factor | | | | | 103.04 |
| **St. Croix, U.S. Virgin Islands** | | | | | |
| 1. Food | | 13.16 | | | 116.05 |

APPENDIX 4.—2002 FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Cereals and bakery products | 0.98 | 7.45 | 129.89 | |
| | Meats, poultry, fish, and eggs | 1.47 | 11.16 | 129.25 | |
| | Dairy products | 0.65 | 4.94 | 155.69 | |
| | Fruits and vegetables | 0.73 | 5.56 | 108.80 | |
| | Processed foods | 1.54 | 11.68 | 128.02 | |
| | Other food at home | 0.42 | 3.16 | 108.01 | |
| | Nonalcoholic beverages | 0.49 | 3.74 | 132.85 | |
| | Food away from home | 5.93 | 45.04 | 105.82 | |
| | Alcoholic beverages | 0.96 | 7.28 | 99.25 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 31.30 | | | 98.79 |
| | Shelter | 28.07 | 89.67 | 72.97 | |
| | Energy utilities | 2.65 | 8.46 | 343.31 | |
| | Water and other public services | 0.59 | 1.87 | 230.60 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.06 | | | 126.20 |
| | Household operations | 1.36 | 22.51 | 58.68 | |
| | Housekeeping supplies | 1.06 | 17.53 | 138.03 | |
| | Textiles and area rugs | 0.25 | 4.16 | 98.61 | |
| | Furniture | 1.05 | 17.39 | 141.31 | |
| | Major appliances | 0.37 | 6.03 | 121.13 | |
| | Small appliances, misc. housewares | 0.21 | 3.46 | 101.87 | |
| | Miscellaneous household equipment | 1.75 | 28.91 | 169.19 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 4.00 | | | 102.52 |
| | Men and boys | 0.75 | 18.69 | 115.94 | |
| | Women and girls | 1.67 | 41.66 | 98.51 | |
| | Children under 2 | 0.18 | 4.55 | 83.57 | |
| | Footwear | 0.70 | 17.48 | 97.20 | |
| | Other apparel products and services. | 0.71 | 17.63 | 107.95 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.93 | | | 111.02 |
| | Motor vehicle costs | 9.09 | 53.67 | 112.02 | |
| | Gasoline and motor oil | 2.71 | 16.02 | 73.46 | |
| | Maintenance and repairs | 1.81 | 10.72 | 88.94 | |
| | Vehicle insurance | 1.73 | 10.24 | 119.53 | |
| | Public transportation | 1.58 | 9.35 | 185.59 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.44 | | | 102.17 |
| | Health insurance | 2.08 | 46.97 | 110.99 | |
| | Medical services | 1.43 | 32.31 | 83.05 | |
| | Drugs and medical supplies | 0.92 | 20.72 | 111.99 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 6.23 | | | 107.72 |
| | Fees and admissions | 1.46 | 23.38 | 85.81 | |
| | Television, radios, sound equipment | 0.77 | 12.38 | 94.05 | |
| | Pets, toys, and playground equipment. | 1.15 | 18.48 | 124.46 | |
| | Other entertainment supplies, etc. | 0.97 | 15.57 | 118.42 | |
| | Personal care products | 0.69 | 11.10 | 120.92 | |
| | Personal care services | 0.70 | 11.29 | 107.77 | |
| | Reading | 0.49 | 7.80 | 115.28 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.09 | | | 173.59 |
| | Education | 0.21 | 5.06 | 268.97 | |
| | Communications | 3.24 | 79.32 | 180.93 | |
| | Computers and computer services | 0.64 | 15.62 | 105.41 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 13.79 | | | 105.08 |
| | Tobacco products, etc. | 0.48 | 3.51 | 52.54 | |
| | Miscellaneous | 2.09 | 15.12 | 144.64 | |
| | Personal insurance and pensions | 11.22 | 81.37 | 100.00 | |
| | PEG Total | | 100.00 | | |
| **St. Thomas, U.S. Virgin Islands** | | | | | |
| 1. Food | | 13.16 | | | 118.86 |
| | Cereals and bakery products | 0.98 | 7.45 | 135.94 | |

APPENDIX 4.—2002 FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Meats, poultry, fish, and eggs | 1.47 | 11.16 | 133.18 | |
| | Dairy products | 0.65 | 4.94 | 161.42 | |
| | Fruits and vegetables | 0.73 | 5.56 | 120.34 | |
| | Processed foods | 1.54 | 11.68 | 139.00 | |
| | Other food at home | 0.42 | 3.16 | 115.51 | |
| | Nonalcoholic beverages | 0.49 | 3.74 | 139.29 | |
| | Food away from home | 5.93 | 45.04 | 104.61 | |
| | Alcoholic beverages | 0.96 | 7.28 | 96.20 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 31.30 | | | 116.00 |
| | Shelter | 28.07 | 89.67 | 92.16 | |
| | Energy utilities | 2.65 | 8.46 | 343.31 | |
| | Water and other public services | 0.59 | 1.87 | 230.60 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.06 | | | 126.12 |
| | Household operations | 1.36 | 22.51 | 63.82 | |
| | Housekeeping supplies | 1.06 | 17.53 | 137.67 | |
| | Textiles and area rugs | 0.25 | 4.16 | 117.68 | |
| | Furniture | 1.05 | 17.39 | 141.31 | |
| | Major appliances | 0.37 | 6.03 | 121.04 | |
| | Small appliances, misc. housewares | 0.21 | 3.46 | 102.41 | |
| | Miscellaneous household equipment | 1.75 | 28.91 | 163.62 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 4.00 | | | 101.14 |
| | Men and boys | 0.75 | 18.69 | 102.33 | |
| | Women and girls | 1.67 | 41.66 | 97.41 | |
| | Children under 2 | 0.18 | 4.55 | 83.57 | |
| | Footwear | 0.70 | 17.48 | 99.03 | |
| | Other apparel products and services. | 0.71 | 17.63 | 115.33 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.93 | | | 119.49 |
| | Motor vehicle costs | 9.09 | 53.67 | 111.91 | |
| | Gasoline and motor oil | 2.71 | 16.02 | 122.52 | |
| | Maintenance and repairs | 1.81 | 10.72 | 80.37 | |
| | Vehicle insurance | 1.73 | 10.24 | 119.53 | |
| | Public transportation | 1.58 | 9.35 | 202.62 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.44 | | | 114.18 |
| | Health insurance | 2.08 | 46.97 | 110.99 | |
| | Medical services | 1.43 | 32.31 | 121.45 | |
| | Drugs and medical supplies | 0.92 | 20.72 | 110.08 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 6.23 | | | 106.38 |
| | Fees and admissions | 1.46 | 23.38 | 58.55 | |
| | Television, radios, sound equipment | 0.77 | 12.38 | 104.26 | |
| | Pets, toys and playground equipment. | 1.15 | 18.48 | 132.35 | |
| | Other entertainment supplies, etc. | 0.97 | 15.57 | 130.73 | |
| | Personal care products | 0.69 | 11.10 | 113.14 | |
| | Personal care services | 0.70 | 11.29 | 116.88 | |
| | Reading | 0.49 | 7.80 | 118.17 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.09 | | | 168.47 |
| | Education | 0.21 | 5.06 | 188.50 | |
| | Communications | 3.24 | 79.32 | 179.61 | |
| | Computers and computer services | 0.64 | 15.62 | 105.41 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 13.79 | | | 102.87 |
| | Tobacco products, etc. | 0.48 | 3.51 | 60.63 | |
| | Miscellaneous | 2.09 | 15.12 | 128.10 | |
| | Personal insurance and pensions | 11.22 | 81.37 | 100.00 | |
| | PEG Total | | 100.00 | | |

APPENDIX 4.—2002 FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | St. Croix index (percent) | St. Thomas/ St. John indexes (percent) | USVI wtd index |
|---|---|---|---|---|
| | **U.S. Virgin Islands** | | | |
| Employment Weights | | 44.0 | 56.0 | |
| 1. Food | | 116.05 | 118.86 | 117.62 |
| | Cereals and bakery products | 129.89 | 135.94 | 133.28 |
| | Meats, poultry, fish, and eggs | 129.25 | 133.18 | 131.45 |
| | Dairy products | 155.69 | 161.42 | 158.90 |
| | Fruits and vegetables | 108.80 | 120.34 | 115.26 |
| | Processed foods | 128.02 | 139.00 | 134.17 |
| | Other food at home | 108.01 | 115.51 | 112.21 |
| | Nonalcoholic beverages | 132.85 | 139.29 | 136.45 |
| | Food away from home | 105.82 | 104.61 | 105.14 |
| | Alcoholic beverages | 99.25 | 96.20 | 97.54 |
| 2. Shelter and Utilities | | 98.79 | 116.00 | 108.43 |
| | Shelter | 72.97 | 92.16 | 83.72 |
| | Energy utilities | 343.31 | 343.31 | 343.31 |
| | Water and other public services | 230.60 | 230.60 | 230.60 |
| 3. Household Furnishings and Supplies | | 126.20 | 126.12 | 126.15 |
| | Household operations | 58.68 | 63.82 | 61.56 |
| | Housekeeping supplies | 138.03 | 137.67 | 137.83 |
| | Textiles and area rugs | 98.61 | 117.63 | 109.26 |
| | Furniture | 141.31 | 141.31 | 141.31 |
| | Major appliances | 127.13 | 127.04 | 123.72 |
| | Small appliances, misc. housewares | 101.87 | 102.41 | 102.17 |
| | Miscellaneous household equipment | 169.19 | 163.62 | 166.07 |
| 4. Apparel and Services | | 102.52 | 101.14 | 101.75 |
| | Men and boys | 115.94 | 102.33 | 108.32 |
| | Women and girls | 98.51 | 97.41 | 97.89 |
| | Children under 2 | 83.57 | 83.57 | 83.57 |
| | Footwear | 97.20 | 99.03 | 98.23 |
| | Other apparel products and services | 107.95 | 115.33 | 112.08 |
| 5. Transportation | | 111.02 | 119.49 | 115.76 |
| | Motor vehicle costs | 112.02 | 111.91 | 111.96 |
| | Gasoline and motor oil | 73.46 | 122.52 | 100.93 |
| | Maintenance and repairs | 88.94 | 80.37 | 84.14 |
| | Vehicle insurance | 119.53 | 119.53 | 119.53 |
| | Public transportation | 185.59 | 202.62 | 195.13 |
| 6. Medical | | 102.17 | 114.18 | 108.90 |
| | Health insurance | 110.99 | 110.99 | 110.99 |
| | Medical services | 83.05 | 121.45 | 104.56 |
| | Drugs and medical supplies | 111.99 | 110.08 | 110.92 |
| 7. Recreation | | 107.72 | 106.38 | 106.97 |
| | Fees and admissions | 85.81 | 58.55 | 70.55 |
| | Television, radios, sound equipment | 94.05 | 104.26 | 99.77 |
| | Pets, toys & playground equipment | 124.46 | 132.35 | 128.88 |
| | Other entertainment supplies, etc. | 118.42 | 130.73 | 125.31 |
| | Personal care products | 120.92 | 113.14 | 116.56 |
| | Personal care services | 107.77 | 116.88 | 112.87 |
| | Reading | 115.28 | 118.17 | 116.90 |
| 8. Education and Communication | | 173.59 | 168.47 | 170.72 |
| | Education | 268.97 | 188.50 | 223.91 |
| | Communications | 180.93 | 179.61 | 180.19 |
| | Computers and computer services | 105.41 | 105.41 | 105.41 |
| 9. Miscellaneous | | 105.08 | 102.87 | 103.84 |
| | Tobacco products, etc. | 52.54 | 60.63 | 57.07 |
| | Miscellaneous | 144.64 | 128.10 | 135.38 |
| | Personal insurance and pensions | 100.00 | 100.00 | 100.00 |
| Overall Price Index | | | | 113.53 |
| Plus Adjustment Factor | | | | 9.00 |
| Preliminary COLA Rate | | | | 122.53 |

APPENDIX 5.—2003 FINAL LIVING-COST RESULTS FOR THE ALASKA COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| **Anchorage, Alaska** | | | | | |
| 1. Food | | 12.30 | | | 114.58 |
| | Cereals and bakery products | 0.93 | 7.60 | 117.91 | |
| | Meats, poultry, fish, and eggs | 1.40 | 11.40 | 108.37 | |
| | Dairy products | 0.64 | 5.24 | 127.58 | |
| | Fruits and vegetables | 0.71 | 5.79 | 169.90 | |
| | Processed foods | 1.48 | 12.04 | 113.79 | |
| | Other food at home | 0.37 | 3.05 | 115.41 | |
| | Nonalcoholic beverages | 0.47 | 3.85 | 142.08 | |
| | Food away from home | 5.41 | 44.02 | 104.21 | |
| | Alcoholic beverages | 0.86 | 7.01 | 116.68 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 33.18 | | | 101.96 |
| | Shelter | 29.44 | 88.74 | 90.13 | |
| | Energy utilities | 3.05 | 9.20 | 212.43 | |
| | Water and other public services | 0.68 | 2.06 | 118.15 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.07 | | | 105.32 |
| | Household operations | 1.53 | 25.20 | 102.92 | |
| | Housekeeping supplies | 1.05 | 17.31 | 103.97 | |
| | Textiles and area rugs | 0.29 | 4.76 | 102.25 | |
| | Furniture | 1.15 | 18.94 | 104.57 | |
| | Major appliances | 0.38 | 6.24 | 110.38 | |
| | Small appliances, misc. housewares | 0.20 | 3.24 | 114.16 | |
| | Misc. household equipment | 1.47 | 24.30 | 107.47 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 4.01 | | | 109.63 |
| | Men and boys | 0.90 | 22.43 | 118.23 | |
| | Women and girls | 1.58 | 39.55 | 112.12 | |
| | Children under 2 | 0.18 | 4.60 | 90.70 | |
| | Footwear | 0.67 | 16.75 | 98.83 | |
| | Other apparel products and services. | 0.67 | 16.68 | 108.24 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.35 | | | 112.30 |
| | Motor vehicle costs | 8.57 | 52.43 | 102.17 | |
| | Gasoline and motor oil | 2.87 | 17.58 | 107.36 | |
| | Maintenance and repairs | 1.69 | 10.32 | 101.97 | |
| | Vehicle insurance | 1.79 | 10.92 | 135.96 | |
| | Public transportation | 1.43 | 8.76 | 165.59 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.75 | | | 111.51 |
| | Health insurance | 2.28 | 47.95 | 113.65 | |
| | Medical services | 1.55 | 32.53 | 118.98 | |
| | Drugs and medical supplies | 0.93 | 19.52 | 93.78 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 7.02 | | | 97.64 |
| | Fees and admissions | 1.46 | 20.77 | 92.96 | |
| | Television, radios, sound equipment | 0.73 | 10.36 | 100.15 | |
| | Pets, toys, and playground equipment. | 1.04 | 14.84 | 104.07 | |
| | Other entertainment supplies, etc. | 2.02 | 28.81 | 101.48 | |
| | Personal care products | 0.82 | 11.62 | 86.00 | |
| | Personal care services | 0.56 | 7.90 | 88.08 | |
| | Reading | 0.40 | 5.70 | 110.95 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.05 | | | 100.37 |
| | Education | 0.18 | 4.42 | 29.67 | |
| | Communications | 3.37 | 83.30 | 104.60 | |
| | Computers and computer services | 0.50 | 12.29 | 97.09 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 12.28 | | | 108.78 |
| | Tobacco products, etc. | 0.46 | 3.75 | 108.17 | |
| | Miscellaneous | 1.83 | 14.89 | 156.88 | |
| | Personal insurance and pensions | 9.99 | 81.35 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.00 | | | 106.64 |
| Plus Adjustment Factor | | | | | 7.00 |

APPENDIX 5.—2003 FINAL LIVING-COST RESULTS FOR THE ALASKA COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| Index Plus Adjustment Factor | | | | | 113.64 |
| | **Fairbanks, Alaska** | | | | |
| 1. Food | | 12.30 | | | 116.25 |
| | Cereals and bakery products | 0.93 | 7.60 | 124.89 | |
| | Meats, poultry, fish, and eggs | 1.40 | 11.40 | 111.48 | |
| | Dairy products | 0.64 | 5.24 | 115.91 | |
| | Fruits and vegetables | 0.71 | 5.79 | 169.40 | |
| | Processed foods | 1.48 | 12.04 | 120.63 | |
| | Other food at home | 0.37 | 3.05 | 114.36 | |
| | Nonalcoholic beverages | 0.47 | 3.85 | 152.88 | |
| | Food away from home | 5.41 | 44.02 | 103.08 | |
| | Alcoholic beverages | 0.86 | 7.01 | 126.87 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 33.18 | | | 99.93 |
| | Shelter | 29.44 | 88.74 | 80.89 | |
| | Energy utilities | 3.05 | 9.20 | 270.97 | |
| | Water and other public services | 0.68 | 2.06 | 155.96 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.07 | | | 109.56 |
| | Household operations | 1.53 | 25.20 | 99.74 | |
| | Housekeeping supplies | 1.05 | 17.31 | 115.45 | |
| | Textiles and area rugs | 0.29 | 4.76 | 103.65 | |
| | Furniture | 1.15 | 18.94 | 104.57 | |
| | Major appliances | 0.38 | 6.24 | 126.17 | |
| | Small appliances, misc. housewares | 0.20 | 3.24 | 125.61 | |
| | Misc. household equipment | 1.47 | 24.30 | 114.19 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 4.01 | | | 106.64 |
| | Men and boys | 0.90 | 22.43 | 103.68 | |
| | Women and girls | 1.58 | 39.55 | 104.53 | |
| | Children under 2 | 0.18 | 4.60 | 89.89 | |
| | Footwear | 0.67 | 16.75 | 93.82 | |
| | Other apparel products and services. | 0.67 | 16.68 | 133.11 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.35 | | | 112.50 |
| | Motor vehicle costs | 8.57 | 52.43 | 101.33 | |
| | Gasoline and motor oil | 2.87 | 17.58 | 106.31 | |
| | Maintenance and repairs | 1.69 | 10.32 | 95.57 | |
| | Vehicle insurance | 1.79 | 10.92 | 130.80 | |
| | Public transportation | 1.43 | 8.76 | 188.94 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.75 | | | 112.34 |
| | Health insurance | 2.28 | 47.95 | 111.83 | |
| | Medical services | 1.55 | 32.53 | 123.13 | |
| | Drugs and medical supplies | 0.93 | 19.52 | 95.63 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 7.02 | | | 97.66 |
| | Fees and admissions | 1.46 | 20.77 | 92.48 | |
| | Television, radios, sound equipment | 0.73 | 10.36 | 99.46 | |
| | Pets, toys, and playground equipment. | 1.04 | 14.84 | 108.08 | |
| | Other entertainment supplies, etc. | 2.02 | 28.81 | 106.80 | |
| | Personal care products | 0.82 | 11.62 | 83.46 | |
| | Personal care services | 0.56 | 7.90 | 60.47 | |
| | Reading | 0.40 | 5.70 | 120.53 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.05 | | | 101.90 |
| | Education | 0.18 | 4.42 | 13.84 | |
| | Communications | 3.37 | 83.30 | 107.28 | |
| | Computers and computer services | 0.50 | 12.29 | 97.09 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 12.28 | | | 110.23 |
| | Tobacco products, etc. | 0.46 | 3.75 | 107.12 | |
| | Miscellaneous | 1.83 | 14.89 | 166.87 | |
| | Personal insurance and pensions | 9.99 | 81.35 | 100.00 | |
| | PEG Total | | 100.00 | | |

APPENDIX 5.—2003 FINAL LIVING-COST RESULTS FOR THE ALASKA COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| Overall Price Index | MEG Total | 100.00 | | | 106.62 |
| Plus Adjustment Factor | | | | | 9.00 |
| Index Plus Adjustment Factor | | | | | 115.62 |
| **Juneau, Alaska** | | | | | |
| 1. Food | | 12.30 | | | 121.13 |
| | Cereals and bakery products | 0.93 | 7.60 | 122.40 | |
| | Meats, poultry, fish, and eggs | 1.40 | 11.40 | 116.44 | |
| | Dairy products | 0.64 | 5.24 | 129.04 | |
| | Fruits and vegetables | 0.71 | 5.79 | 168.34 | |
| | Processed foods | 1.48 | 12.04 | 119.04 | |
| | Other food at home | 0.37 | 3.05 | 118.10 | |
| | Nonalcoholic beverages | 0.47 | 3.85 | 171.62 | |
| | Food away from home | 5.41 | 44.02 | 112.67 | |
| | Alcoholic beverages | 0.86 | 7.01 | 112.77 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 33.18 | | | 105.97 |
| | Shelter | 29.44 | 88.74 | 92.28 | |
| | Energy utilities | 3.05 | 9.20 | 236.45 | |
| | Water and other public services | 0.68 | 2.06 | 112.61 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.07 | | | 111.16 |
| | Household operations | 1.53 | 25.20 | 104.07 | |
| | Housekeeping supplies | 1.05 | 17.31 | 118.21 | |
| | Textiles and area rugs | 0.29 | 4.76 | 108.66 | |
| | Furniture | 1.15 | 18.94 | 108.67 | |
| | Major appliances | 0.38 | 6.24 | 121.35 | |
| | Small appliances, misc. housewares | 0.20 | 3.24 | 104.19 | |
| | Misc. household equipment | 1.47 | 24.30 | 114.25 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 4.01 | | | 105.13 |
| | Men and boys | 0.90 | 22.43 | 111.43 | |
| | Women and girls | 1.58 | 39.55 | 100.69 | |
| | Children under 2 | 0.18 | 4.60 | 88.83 | |
| | Footwear | 0.67 | 16.75 | 106.39 | |
| | Other apparel products and services. | 0.67 | 16.68 | 110.38 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.35 | | | 107.08 |
| | Motor vehicle costs | 8.57 | 52.43 | 98.27 | |
| | Gasoline and motor oil | 2.87 | 17.58 | 115.15 | |
| | Maintenance and repairs | 1.69 | 10.32 | 99.87 | |
| | Vehicle insurance | 1.79 | 10.92 | 92.71 | |
| | Public transportation | 1.43 | 8.76 | 170.09 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.75 | | | 113.18 |
| | Health insurance | 2.28 | 47.95 | 111.91 | |
| | Medical services | 1.55 | 32.53 | 123.47 | |
| | Drugs and medical supplies | 0.93 | 19.52 | 99.14 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 7.02 | | | 109.42 |
| | Fees and admissions | 1.46 | 20.77 | 99.88 | |
| | Television, radios, sound equipment | 0.73 | 10.36 | 105.97 | |
| | Pets, toys, and playground equipment. | 1.04 | 14.84 | 107.48 | |
| | Other entertainment supplies, etc. | 2.02 | 28.81 | 112.91 | |
| | Personal care products | 0.82 | 11.62 | 111.96 | |
| | Personal care services | 0.56 | 7.90 | 83.02 | |
| | Reading | 0.40 | 5.70 | 169.37 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.05 | 5 | | 103.58 |
| | Education | 0.18 | 4.42 | 22.50 | |
| | Communications | 3.37 | 83.30 | 108.24 | |
| | Computers and computer services | 0.50 | 12.29 | 101.15 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 12.28 | | | 108.45 |
| | Tobacco products, etc. | 0.46 | 3.75 | 119.60 | |
| | Miscellaneous | 1.83 | 14.89 | 151.80 | |

APPENDIX 5.—2003 FINAL LIVING-COST RESULTS FOR THE ALASKA COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Personal insurance and pensions ... | 9.99 | 81.35 | 100.00 | ..... |
| | PEG Total ..... | | 100.00 | ..... | ..... |
| Overall Price Index ..... | MEG Total ..... | 100.00 | ..... | ..... | 109.09 |
| Plus Adjustment Factor ..... | ..... | ..... | ..... | ..... | 9.00 |
| Index Plus Adjustment Factor ..... | ..... | ..... | ..... | ..... | 118.09 |

| Anchorage results 1/10/06 | | Relative to | | | | Kodiak Relative to | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | Anchorage | | DC |
| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | DC PEG index | MEG index | PEG index* | MEG index* | MEG index |
| **Rest of the State Of Alaska** | | | | | | | | |
| 1. Food ..... | ..... | 12.26 | ..... | ..... | 114.58 | ..... | 145.69 | 166.94 |
| | Cereals and bakery products. | 0.93 | 7.60 | 117.91 | ..... | ..... | ..... | ..... |
| | Meats, poultry, fish, and eggs. | 1.40 | 11.40 | 108.37 | ..... | ..... | ..... | ..... |
| | Dairy products ..... | 0.64 | 5.24 | 127.58 | ..... | ..... | ..... | ..... |
| | Fruits and vegetables .. | 0.71 | 5.79 | 169.90 | ..... | ..... | ..... | ..... |
| | Processed foods ..... | 1.48 | 12.04 | 113.79 | ..... | ..... | ..... | ..... |
| | Other food at home ..... | 0.37 | 3.05 | 115.41 | ..... | ..... | ..... | ..... |
| | Nonalcoholic beverages. | 0.47 | 3.85 | 142.08 | ..... | ..... | ..... | ..... |
| | Food away from home | 5.40 | 44.02 | 104.21 | ..... | ..... | ..... | ..... |
| | Alcoholic beverages .... | 0.86 | 7.01 | 116.68 | ..... | ..... | ..... | ..... |
| | PEG Total ..... | ..... | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 2. Shelter and Utilities | ..... | 33.38 | ..... | ..... | 101.96 | ..... | 105.04 | 107.10 |
| | Shelter ..... | 29.66 | 88.85 | 90.13 | ..... | 105.67 | ..... | ..... |
| | Energy utilities ..... | 3.04 | 9.11 | 212.43 | ..... | 100.00 | ..... | ..... |
| | Water and other public services. | 0.68 | 2.04 | 118.15 | ..... | 100.00 | ..... | ..... |
| | PEG Total ..... | ..... | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 3. Household Furnishings and Supplies. | ..... | 6.05 | ..... | ..... | 105.32 | ..... | 134.18 | 141.32 |
| | Household operations .. | 1.52 | 25.20 | 102.92 | ..... | 100.00 | ..... | ..... |
| | Housekeeping supplies | 1.05 | 17.31 | 103.97 | ..... | 145.69 | ..... | ..... |
| | Textiles and area rugs | 0.29 | 4.76 | 102.25 | ..... | 145.69 | ..... | ..... |
| | Furniture ..... | 1.15 | 18.94 | 104.57 | ..... | 145.69 | ..... | ..... |
| | Major appliances ..... | 0.38 | 6.24 | 110.38 | ..... | 145.69 | ..... | ..... |
| | Small appliances, misc. housewares. | 0.20 | 3.24 | 114.16 | ..... | 145.69 | ..... | ..... |
| | Misc. household equipment. | 1.47 | 24.30 | 107.47 | ..... | 145.69 | ..... | ..... |
| | PEG Total ..... | ..... | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 4. Apparel and Services. | ..... | 3.99 | ..... | ..... | 109.63 | ..... | 145.69 | 159.73 |
| | Men and boys ..... | 0.90 | 22.43 | 118.23 | ..... | ..... | ..... | ..... |
| | Women and girls ..... | 1.58 | 39.55 | 112.12 | ..... | ..... | ..... | ..... |
| | Children under 2 ..... | 0.18 | 4.60 | 90.70 | ..... | ..... | ..... | ..... |
| | Footwear ..... | 0.67 | 16.75 | 98.83 | ..... | ..... | ..... | ..... |
| | Other apparel products and services. | 0.67 | 16.68 | 108.24 | ..... | ..... | ..... | ..... |
| | PEG Total ..... | ..... | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 5. Transportation ..... | ..... | 16.31 | ..... | ..... | 112.30 | ..... | 125.94 | 141.44 |
| | Motor vehicle costs ..... | 8.56 | 52.47 | 102.17 | ..... | 145.69 | ..... | ..... |
| | Gasoline and motor oil | 2.86 | 17.56 | 107.36 | ..... | 111.19 | ..... | ..... |
| | Maintenance and repairs. | 1.68 | 10.31 | 101.97 | ..... | 100.00 | ..... | ..... |
| | Vehicle insurance ..... | 1.78 | 10.91 | 135.96 | ..... | 100.00 | ..... | ..... |
| | Public transportation .... | 1.43 | 8.75 | 165.59 | ..... | 100.00 | ..... | ..... |
| | PEG Total ..... | ..... | 100.00 | ..... | ..... | ..... | ..... | ..... |
| 6. Medical ..... | ..... | 4.74 | ..... | ..... | 111.51 | ..... | 108.92 | 121.45 |
| | Health insurance ..... | 2.27 | 47.95 | 113.65 | ..... | 100.00 | ..... | ..... |
| | Medical services ..... | 1.54 | 32.53 | 118.98 | ..... | 100.00 | ..... | ..... |
| | Drugs and medical supplies. | 0.92 | 19.52 | 93.78 | ..... | 145.69 | ..... | ..... |

| Anchorage results 1/10/06 | | Relative to | | | | Kodiak Relative to | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | Anchorage | | DC |
| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | DC PEG index | MEG index | PEG index* | MEG index* | MEG index |
| | PEG Total | | 100.00 | | | | | |
| 7. Recreation | | 7.00 | | | 97.64 | | 132.59 | 129.46 |
| | Fees and admissions | 1.45 | 20.77 | 92.96 | | 100.00 | | |
| | Television, radios, etc. | 0.73 | 10.36 | 100.15 | | 145.69 | | |
| | Pets, toys, and playground equipment. | 1.04 | 14.84 | 104.07 | | 145.69 | | |
| | Other entertainment supplies, etc. | 2.02 | 28.81 | 101.48 | | 145.69 | | |
| | Personal care products | 0.81 | 11.62 | 86.00 | | 145.69 | | |
| | Personal care services | 0.55 | 7.90 | 88.08 | | 100.00 | | |
| | Reading | 0.40 | 5.70 | 110.95 | | 145.69 | | |
| | PEG Total | | 100.00 | | | | | |
| 8. Education and Communication. | | 4.04 | | | 100.37 | | 105.62 | 106.01 |
| | Education | 0.18 | 4.42 | 29.67 | | 100.00 | | |
| | Communications | 3.36 | 83.29 | 104.60 | | 100.00 | | |
| | Computers and computer services. | 0.50 | 12.29 | 97.09 | | 145.69 | | |
| | PEG Total | | 100.00 | | | | | |
| 9. Miscellaneous | | 12.23 | | | 108.78 | | 101.71 | 110.64 |
| | Tobacco products, etc. | 0.46 | 3.75 | 108.17 | | 145.69 | | |
| | Miscellaneous | 1.82 | 14.89 | 156.88 | | 100.00 | | |
| | Personal insurance and pensions. | 9.95 | 81.36 | 100.00 | | 100.00 | | |
| | PEG Total | | 100.00 | | | | | |
| Overall Price Index | MEG Total | 100.00 | | | 106.64 | | | 126.84 |
| Plus Adjustment Factor | | | | | 7.00 | | | 9.00 |
| Index Plus Adjustment Factor. | | | | | 113.64 | | | 135.84 |

*Except for rental data and indexes set at 100, all data area from the University of Alaska Fairbanks, March 2003. Rental data are from Alaska Department of Labor and Workforce Development, 2002. Indexes set to 100 assume costs in Kodiak are equal to those in Anchorage.

## APPENDIX 6.—2003 FINAL LIVING-COST RESULTS FOR THE PACIFIC COLA AREAS

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| **Honolulu County, Hawaii** | | | | | |
| 1. Food | | 12.47 | | | 122.24 |
| | Cereals and bakery products | 0.93 | 7.45 | 149.58 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 112.97 | |
| | Dairy products | 0.69 | 5.54 | 127.68 | |
| | Fruits and vegetables | 0.76 | 6.12 | 125.39 | |
| | Processed foods | 1.54 | 12.37 | 159.28 | |
| | Other food at home | 0.38 | 3.07 | 131.16 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 138.17 | |
| | Food away from home | 5.42 | 43.48 | 108.75 | |
| | Alcoholic beverages | 0.76 | 6.13 | 106.06 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 138.17 |
| | Shelter | 31.48 | 89.01 | 126.30 | |
| | Energy utilities | 3.17 | 8.97 | 267.67 | |
| | Water and other public services | 0.72 | 2.02 | 86.36 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05 | | | 104.33 |
| | Household operations | 1.48 | 24.52 | 92.92 | |
| | Housekeeping supplies | 1.31 | 21.61 | 109.88 | |
| | Textiles and area rugs | 0.33 | 5.52 | 102.31 | |
| | Furniture | 1.07 | 17.76 | 99.49 | |
| | Major appliances | 0.35 | 5.86 | 115.80 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 111.88 | |
| | Misc. household equipment | 1.25 | 20.66 | 112.04 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | | | 122.55 |
| | Men and boys | 0.84 | 22.51 | 112.36 | |
| | Women and girls | 1.44 | 38.33 | 122.50 | |

APPENDIX 6.—2003 FINAL LIVING-COST RESULTS FOR THE PACIFIC COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Children under 2 | 0.19 | 5.18 | 119.50 | |
| | Footwear | 0.72 | 19.08 | 115.42 | |
| | Other apparel products and services. | 0.56 | 14.90 | 148.23 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.36 | | | 118.67 |
| | Motor vehicle costs | 8.97 | 54.85 | 108.88 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 113.73 | |
| | Maintenance and repairs | 1.55 | 9.50 | 117.73 | |
| | Vehicle insurance | 1.79 | 10.92 | 103.42 | |
| | Public transportation | 1.30 | 7.95 | 218.80 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 89.90 |
| | Health insurance | 2.38 | 51.11 | 78.47 | |
| | Medical services | 1.40 | 30.12 | 99.61 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 105.46 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 106.91 |
| | Fees and admissions | 1.20 | 21.27 | 99.68 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 105.22 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 118.33 | |
| | Other entertainment supplies, etc.. | 1.28 | 22.69 | 104.64 | |
| | Personal care products | 0.72 | 12.72 | 113.55 | |
| | Personal care services | 0.54 | 9.57 | 104.96 | |
| | Reading | 0.32 | 5.75 | 104.55 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.02 | G | F | 101.20 |
| | Education | 0.16 | 4.02 | 156.34 | |
| | Communications | 3.43 | 85.35 | 98.89 | |
| | Computers and computer services | 0.43 | 10.64 | 98.89 | |
| | PEG Total | | | | |
| 9. Miscellaneous | | 11.69 | | | 103.35 |
| | Tobacco products, etc | 0.46 | 3.93 | 121.60 | |
| | Miscellaneous | 1.69 | 14.45 | 117.30 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.02 | | | 120.80 |
| Plus Adjustment Factor | | | | | 5.00 |
| Index Plus Adjustment Factor | | | | | 125.80 |
| **Hilo Area, Hawaii** | | | | | |
| 1. Food | | 12.47 | | | 118.81 |
| | Cereals and bakery products | 0.93 | 7.45 | 151.94 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 116.17 | |
| | Dairy products | 0.69 | 5.54 | 139.48 | |
| | Fruits and vegetables | 0.76 | 6.12 | 122.88 | |
| | Processed foods | 1.54 | 12.37 | 153.22 | |
| | Other food at home | 0.38 | 3.07 | 126.61 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 139.16 | |
| | Food away from home | 5.42 | 43.48 | 101.15 | |
| | Alcoholic beverages | 0.76 | 6.13 | 100.53 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 102.98 |
| | Shelter | 31.48 | 89.01 | 76.00 | |
| | Energy utilities | 3.17 | 8.97 | 382.07 | |
| | Water and other public services | 0.72 | 2.02 | 52.84 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05 | | | 105.51 |
| | Household operations | 1.48 | 24.52 | 82.82 | |
| | Housekeeping supplies | 1.31 | 21.61 | 122.31 | |
| | Textiles and area rugs | 0.33 | 5.52 | 111.00 | |
| | Furniture | 1.07 | 17.76 | 99.49 | |
| | Major appliances | 0.35 | 5.86 | 126.70 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 112.22 | |
| | Misc. household equipment | 1.25 | 20.66 | 111.26 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | | | 114.01 |

APPENDIX 6.—2003 FINAL LIVING-COST RESULTS FOR THE PACIFIC COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Men and boys | 0.84 | 22.51 | 113.80 | |
| | Women and girls | 1.44 | 38.33 | 102.27 | |
| | Children under 2 | 0.19 | 5.18 | 119.15 | |
| | Footwear | 0.72 | 19.08 | 109.63 | |
| | Other apparel products and services. | 0.56 | 14.90 | 148.37 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.36 | | | 117.70 |
| | Motor vehicle costs | 8.97 | 54.85 | 100.16 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 118.55 | |
| | Maintenance and repairs | 1.55 | 9.50 | 98.96 | |
| | Vehicle insurance | 1.79 | 10.92 | 103.83 | |
| | Public transportation | 1.30 | 7.95 | 278.48 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 86.45 |
| | Health insurance | 2.38 | 51.11 | 77.33 | |
| | Medical services | 1.40 | 30.12 | 92.57 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 101.45 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 101.09 |
| | Fees and admissions | 1.20 | 21.27 | 83.76 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 110.58 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 117.57 | |
| | Other entertainment supplies, etc. | 1.28 | 22.69 | 104.90 | |
| | Personal care products | 0.72 | 12.72 | 113.21 | |
| | Personal care services | 0.54 | 9.57 | 78.16 | |
| | Reading | 0.32 | 5.75 | 96.69 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | 4.02 | G | F | | 100.20 |
| | Education | 0.16 | 4.02 | 51.82 | |
| | Communications | 3.43 | 85.35 | 102.64 | |
| | Computers and computer services | 0.43 | 10.64 | 98.89 | |
| | PEG Total | | | | |
| 9. Miscellaneous | | 11.69 | | | 102.34 |
| | Tobacco products, etc. | 0.46 | 3.93 | 127.28 | |
| | Miscellaneous | 1.69 | 14.45 | 108.81 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |
| **Kailua Kona/Waimea Area, Hawaii** | | | | | |
| 1. Food | | 12.47 | | | 124.64 |
| | Cereals and bakery products | 0.93 | 7.45 | 161.45 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 107.87 | |
| | Dairy products | 0.69 | 5.54 | 140.79 | |
| | Fruits and vegetables | 0.76 | 6.12 | 120.03 | |
| | Processed foods | 1.54 | 12.37 | 159.15 | |
| | Other food at home | 0.38 | 3.07 | 135.27 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 133.47 | |
| | Food away from home | 5.42 | 43.48 | 112.69 | |
| | Alcoholic beverages | 0.76 | 6.13 | 107.62 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 126.22 |
| | Shelter | 31.48 | 89.01 | 102.11 | |
| | Energy utilities | 3.17 | 8.97 | 382.07 | |
| | Water and other public services | 0.72 | 2.02 | 52.84 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05% | | | 102.21 |
| | Household operations | 1.48 | 24.52 | 86.47 | |
| | Housekeeping supplies | 1.31 | 21.61 | 117.27 | |
| | Textiles and area rugs | 0.33 | 5.52 | 111.71 | |
| | Furniture | 1.07 | 17.76 | 99.49 | |
| | Major appliances | 0.35 | 5.86 | 120.57 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 108.56 | |
| | Misc. household equipment | 1.25 | 20.66 | 98.46 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | v | 125.99 | |
| | Men and boys | 0.84 | 22.51 | 122.02 | |

APPENDIX 6.—2003 FINAL LIVING-COST RESULTS FOR THE PACIFIC COLA AREAS—Continued

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Women and girls | 1.44 | 38.33 | 102.07 | |
| | Children under 2 | 0.19 | 5.18 | 110.07 | |
| | Footwear | 0.72 | 19.08 | 108.42 | |
| | Other apparel products and services. | 0.56 | 14.90 | 221.51 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.36 | | | 118.67 |
| | Motor vehicle costs | 8.97 | 54.85 | 101.61 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 128.62 | |
| | Maintenance and repairs | 1.55 | 9.50 | 108.29 | |
| | Vehicle insurance | 1.79 | 10.92 | 103.83 | |
| | Public transportation | 1.30 | 7.95 | 248.22 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 94.43 |
| | Health insurance | 2.38 | 51.11 | 77.33 | |
| | Medical services | 1.40 | 30.12 | 120.50 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 99.18 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 102.99 |
| | Fees and admissions | 1.20 | 21.27 | 98.36 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 103.98 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 131.78 | |
| | Other entertainment supplies, etc. | 1.28 | 22.69 | 97.49 | |
| | Personal care products | 0.72 | 12.72 | 110.88 | |
| | Personal care services | 0.54 | 9.57 | 73.11 | |
| | Reading | 0.32 | 5.75 | 95.25 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.02 | G | F | 102.25 |
| | Education | 0.16 | 4.02 | 106.65 | |
| | Communications | 3.43 | 85.35 | 102.46 | |
| | Computers and computer services | 0.43 | 10.64 | 98.89 | |
| | PEG Total | | | | |
| 9. Miscellaneous | | 11.69 | | | 104.57 |
| | Tobacco products, etc. | 0.46 | 3.93 | 120.60 | |
| | Miscellaneous | 1.69 | 14.45 | 126.05 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | Hilo area indexes (percent) | Kona/Waimea area indexes (percent) | Hawaii county weighted index |
|---|---|---|---|---|
| | **Hawaii County, Hawaii** | | | |
| Employment Weights | | 66.7 | 33.3 | |
| 1. Food | | 118.81 | 124.64 | 120.75 |
| | Cereals and bakery products | 151.94 | 161.45 | 155.11 |
| | Meats, poultry, fish, and eggs | 116.17 | 107.87 | 113.41 |
| | Dairy products | 139.48 | 140.79 | 139.91 |
| | Fruits and vegetables | 122.88 | 120.03 | 121.93 |
| | Processed foods | 153.22 | 159.15 | 155.19 |
| | Other food at home | 126.61 | 135.27 | 129.50 |
| | Nonalcoholic beverages | 139.16 | 133.47 | 137.26 |
| | Food away from home | 101.15 | 112.69 | 104.99 |
| | Alcoholic beverages | 100.53 | 107.62 | 102.89 |
| 2. Shelter and Utilities | | 102.98 | 126.22 | 110.71 |
| | Shelter | 76.00 | 102.11 | 84.69 |
| | Energy utilities | 382.07 | 382.07 | 382.07 |
| | Water and other public services | 52.84 | 52.84 | 52.84 |
| 3. Household Furnishings and Supplies | | 105.51 | 102.21 | 104.41 |
| | Household operations | 82.82 | 86.47 | 84.04 |
| | Housekeeping supplies | 122.31 | 117.27 | 120.63 |
| | Textiles and area rugs | 111.00 | 111.71 | 111.24 |
| | Furniture | 99.49 | 99.49 | 99.49 |
| | Major appliances | 126.70 | 120.57 | 124.66 |
| | Small appliances, misc. housewares | 112.22 | 108.56 | 111.00 |
| | Misc. household equipment | 111.26 | 98.46 | 107.00 |
| 4. Apparel and Services | | 114.01 | 125.99 | 118.00 |
| | Men and boys | 113.80 | 122.02 | 116.53 |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | Hilo area indexes (percent) | Kona/Waimea area indexes (percent) | Hawaii county weighted index |
|---|---|---|---|---|
| | Women and girls | 102.27 | 102.07 | 102.20 |
| | Children under 2 | 119.15 | 110.07 | 116.12 |
| | Footwear | 109.63 | 108.42 | 109.23 |
| | Other apparel products and services | 148.37 | 221.51 | 172.72 |
| 5. Transportation | | 117.70 | 118.67 | 118.02 |
| | Motor vehicle costs | 100.16 | 101.61 | 100.64 |
| | Gasoline and motor oil | 118.55 | 128.62 | 121.90 |
| | Maintenance and repairs | 98.96 | 108.29 | 102.07 |
| | Vehicle insurance | 103.83 | 103.83 | 103.83 |
| | Public transportation | 278.48 | 248.22 | 268.41 |
| 6. Medical | | 86.45 | 94.43 | 89.11 |
| | Health insurance | 77.33 | 77.33 | 77.33 |
| | Medical services | 92.57 | 120.50 | 101.87 |
| | Drugs and medical supplies | 101.45 | 99.18 | 100.69 |
| 7. Recreation | | 101.09 | 102.99 | 101.72 |
| | Fees and admissions | 83.76 | 98.36 | 88.62 |
| | Television, radios, sound equipment | 110.58 | 103.98 | 108.38 |
| | Pets, toys, and playground equipment | 117.57 | 131.78 | 122.30 |
| | Other entertainment supplies, etc | 104.90 | 97.49 | 102.43 |
| | Personal care products | 113.21 | 110.88 | 112.43 |
| | Personal care services | 78.16 | 73.11 | 76.48 |
| | Reading | 96.69 | 95.25 | 96.21 |
| 8. Education and Communication | | 100.20 | 102.25 | 100.88 |
| | Education | 51.82 | 106.65 | 70.08 |
| | Communications | 102.64 | 102.46 | 102.58 |
| | Computers and computer services | 98.89 | 98.89 | 98.89 |
| 9. Miscellaneous | | 102.34 | 104.57 | 103.09 |
| | Tobacco products, etc | 127.28 | 120.60 | 125.05 |
| | Miscellaneous | 108.81 | 126.05 | 114.55 |
| | Personal insurance and pensions | 100.00 | 100.00 | 100.00 |
| Overall Price Index | | | | 110.25 |
| Plus Adjustment Factor | | | | 7.00 |
| Index Plus Adjustment Factor | | | | 117.25 |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | **Kauai County** | | | | |
| 1. Food | | 12.47 | | | 127.66 |
| | Cereals and bakery products | 0.93 | 7.45 | 162.92 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 116.75 | |
| | Dairy products | 0.69 | 5.54 | 163.44 | |
| | Fruits and vegetables | 0.76 | 6.12 | 139.47 | |
| | Processed foods | 1.54 | 12.37 | 155.96 | |
| | Other food at home | 0.38 | 3.07 | 130.62 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 146.04 | |
| | Food away from home | 5.42 | 43.48 | 110.18 | |
| | Alcoholic beverages | 0.76 | 6.13 | 116.57 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 132.98 |
| | Shelter | 31.48 | 89.01 | 108.84 | |
| | Energy utilities | 3.17 | 8.97 | 391.70 | |
| | Water and other public services | 0.72 | 2.02 | 48.30 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05 | | | 104.93 |
| | Household operations | 1.48 | 24.52 | 83.39 | |
| | Housekeeping supplies | 1.31 | 21.61 | 124.86 | |
| | Textiles and area rugs | 0.33 | 5.52 | 102.31 | |
| | Furniture | 1.07 | 17.76 | 99.49 | |
| | Major appliances | 0.35 | 5.86 | 119.73 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 116.04 | |
| | Misc. household equipment | 1.25 | 20.66 | 108.65 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | | | 127.09 |
| | Men and boys | 0.84 | 22.51 | 107.91 | |
| | Women and girls | 1.44 | 38.33 | 110.27 | |
| | Children under 2 | 0.19 | 5.18 | 121.60 | |
| | Footwear | 0.72 | 19.08 | 109.41 | |
| | Other apparel products and services. | 0.56 | 14.90 | 223.87 | |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.36 | | | 121.37 |
| | Motor vehicle costs | 8.97 | 54.85 | 108.56 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 126.75 | |
| | Maintenance and repairs | 1.55 | 9.50 | 111.57 | |
| | Vehicle insurance | 1.79 | 10.92 | 83.83 | |
| | Public transportation | 1.30 | 7.95 | 261.81 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 90.77 |
| | Health insurance | 2.38 | 51.11 | 78.32 | |
| | Medical services | 1.40 | 30.12 | 99.65 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 110.40 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 109.90 |
| | Fees and admissions | 1.20 | 21.27 | 104.33 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 109.71 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 118.40 | |
| | Other entertainment supplies, etc | 1.28 | 22.69 | 102.74 | |
| | Personal care products | 0.72 | 12.72 | 121.58 | |
| | Personal care services | 0.54 | 9.57 | 94.99 | |
| | Reading | 0.32 | 5.75 | 135.52 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.02 | G | F | 101.43 |
| | Education | 0.16 | 4.02 | 80.64 | |
| | Communications | 3.43 | 85.35 | 102.73 | |
| | Computers and computer services | 0.43 | 10.64 | 98.89 | |
| | PEG Total | | | | |
| 9. Miscellaneous | | 11.69 | | | 104.46 |
| | Tobacco products, etc | 0.46 | 3.93 | 127.28 | |
| | Miscellaneous | 1.69 | 14.45 | 123.45 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.02 | | | 120.63 |
| Plus Adjustment Factor | | | | | 7.00 |
| Index Plus Adjustment Factor | | | | | 127.63 |
| **Maui County, Hawaii** | | | | | |
| 1. Food | | 12.47 | | | 134.08 |
| | Cereals and bakery products | 0.93 | 7.45 | 168.84 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 131.51 | |
| | Dairy products | 0.69 | 5.54 | 134.00 | |
| | Fruits and vegetables | 0.76 | 6.12 | 140.61 | |
| | Processed foods | 1.54 | 12.37 | 166.13 | |
| | Other food at home | 0.38 | 3.07 | 134.66 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 137.96 | |
| | Food away from home | 5.42 | 43.48 | 120.67 | |
| | Alcoholic beverages | 0.76 | 6.13 | 118.23 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 139.89 |
| | Shelter | 31.48 | 89.01 | 118.58 | |
| | Energy utilities | 3.17 | 8.97 | 363.28 | |
| | Water and other public services | 0.72 | 2.02 | 87.46 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05 | | | 106.13 |
| | Household operations | 1.48 | 24.52 | 92.79 | |
| | Housekeeping supplies | 1.31 | 21.61 | 123.00 | |
| | Textiles and area rugs | 0.33 | 5.52 | 102.31 | |
| | Furniture | 1.07 | 17.76 | 99.49 | |
| | Major appliances | 0.35 | 5.86 | 115.55 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 111.79 | |
| | Misc. household equipment | 1.25 | 20.66 | 107.24 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | | | 125.84 |
| | Men and boys | 0.84 | 22.51 | 125.02 | |
| | Women and girls | 1.44 | 38.33 | 114.10 | |
| | Children under 2 | 0.19 | 5.18 | 116.89 | |
| | Footwear | 0.72 | 19.08 | 115.95 | |
| | Other apparel products and services. | 0.56 | 14.90 | 173.03 | |
| | PEG Total | | 100.00 | | |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| 5. Transportation | | 16.36 | | | 125.90 |
| | Motor vehicle costs | 8.97 | 54.85 | 114.93 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 133.65 | |
| | Maintenance and repairs | 1.55 | 9.50 | 101.69 | |
| | Vehicle insurance | 1.79 | 10.92 | 99.63 | |
| | Public transportation | 1.30 | 7.95 | 250.37 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 95.93 |
| | Health insurance | 2.38 | 51.11 | 78.85 | |
| | Medical services | 1.40 | 30.12 | 116.19 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 109.95 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 106.87 |
| | Fees and admissions | 1.20 | 21.27 | 95.25 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 109.47 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 130.22 | |
| | Other entertainment supplies, etc | 1.28 | 22.69 | 98.62 | |
| | Personal care products | 0.72 | 12.72 | 120.70 | |
| | Personal care services | 0.54 | 9.57 | 98.52 | |
| | Reading | 0.32 | 5.75 | 97.78 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.02 | G | F | 101.31 |
| | Education | 0.16 | 4.02 | 89.53 | |
| | Communications | 3.43 | 85.35 | 102.17 | |
| | Computers and computer services | 0.43 | 10.64 | 98.89 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 11.69 | | | 102.64 |
| | Tobacco products, etc | 0.46 | 3.93 | 134.73 | |
| | Miscellaneous | 1.69 | 14.45 | 108.83 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.02 | | | 124.50 |
| Plus Adjustment Factor | | | | | 7.00 |
| Index Plus Adjustment Factor | | | | | 131.50 |
| **Guam and the Northern Mariana Islands** | | | | | |
| 1. Food | | 12.47 | | | 116.75 |
| | Cereals and bakery products | 0.93 | 7.45 | 139.65 | |
| | Meats, poultry, fish, and eggs | 1.51 | 12.13 | 89.24 | |
| | Dairy products | 0.69 | 5.54 | 165.86 | |
| | Fruits and vegetables | 0.76 | 6.12 | 101.18 | |
| | Processed foods | 1.54 | 12.37 | 152.42 | |
| | Other food at home | 0.38 | 3.07 | 133.74 | |
| | Nonalcoholic beverages | 0.46 | 3.71 | 140.37 | |
| | Food away from home | 5.42 | 43.48 | 105.43 | |
| | Alcoholic beverages | 0.76 | 6.13 | 100.03 | |
| | PEG Total | | 100.00 | | |
| 2. Shelter and Utilities | | 35.37 | | | 111.49 |
| | Shelter | 31.48 | 89.01 | 91.21 | |
| | Energy utilities | 3.17 | 8.97 | 316.64 | |
| | Water and other public services | 0.72 | 2.02 | 94.73 | |
| | PEG Total | | 100.00 | | |
| 3. Household Furnishings and Supplies. | | 6.05 | | | 113.30 |
| | Household operations | 1.48 | 24.52 | 61.20 | |
| | Housekeeping supplies | 1.31 | 21.61 | 120.72 | |
| | Textiles and area rugs | 0.33 | 5.52 | 90.66 | |
| | Furniture | 1.07 | 17.76 | 98.07 | |
| | Major appliances | 0.35 | 5.86 | 175.35 | |
| | Small appliances, misc. housewares | 0.25 | 4.06 | 116.30 | |
| | Misc. household equipment | 1.25 | 20.66 | 168.30 | |
| | PEG Total | | 100.00 | | |
| 4. Apparel and Services | | 3.75 | | | 119.20 |
| | Men and boys | 0.84 | 22.51 | 121.44 | |
| | Women and girls | 1.44 | 38.33 | 103.06 | |
| | Children under 2 | 0.19 | 5.18 | 129.68 | |
| | Footwear | 0.72 | 19.08 | 113.80 | |
| | Other apparel products and services. | 0.56 | 14.90 | 160.57 | |
| | PEG Total | | 100.00 | | |
| 5. Transportation | | 16.36 | | | 150.53 |

| Major expenditure group (MEG) | Primary expenditure group (PEG) | MEG weight (percent) | PEG weight (percent) | PEG index | MEG index |
|---|---|---|---|---|---|
| | Motor vehicle costs | 8.97 | 54.85 | 113.75 | |
| | Gasoline and motor oil | 2.75 | 16.79 | 122.00 | |
| | Maintenance and repairs | 1.55 | 9.50 | 89.06 | |
| | Vehicle insurance | 1.79 | 10.92 | 147.39 | |
| | Public transportation | 1.30 | 7.95 | 542.50 | |
| | PEG Total | | 100.00 | | |
| 6. Medical | | 4.65 | | | 99.47 |
| | Health insurance | 2.38 | 51.11 | 97.04 | |
| | Medical services | 1.40 | 30.12 | 96.52 | |
| | Drugs and medical supplies | 0.87 | 18.77 | 110.82 | |
| | PEG Total | | 100.00 | | |
| 7. Recreation | | 5.65 | | | 108.24 |
| | Fees and admissions | 1.20 | 21.27 | 79.65 | |
| | Television, radios, sound equipment | 0.72 | 12.69 | 123.99 | |
| | Pets, toys, and playground equipment. | 0.86 | 15.31 | 124.92 | |
| | Other entertainment supplies, etc | 1.28 | 22.69 | 111.01 | |
| | Personal care products | 0.72 | 12.72 | 135.23 | |
| | Personal care services | 0.54 | 9.57 | 78.87 | |
| | Reading | 0.32 | 5.75 | 113.10 | |
| | PEG Total | | 100.00 | | |
| 8. Education and Communication | | 4.02 | G | F | 137.47 |
| | Education | 0.16 | 4.02 | 153.41 | |
| | Communications | 3.43 | 85.35 | 140.84 | |
| | Computers and computer services | 0.43 | 10.64 | 104.39 | |
| | PEG Total | | 100.00 | | |
| 9. Miscellaneous | | 11.69 | | | 104.39 |
| | Tobacco products, etc | 0.46 | 3.93 | 85.63 | |
| | Miscellaneous | 1.69 | 14.45 | 134.31 | |
| | Personal insurance and pensions | 9.54 | 81.62 | 100.00 | |
| | PEG Total | | 100.00 | | |
| Overall Price Index | MEG Total | 100.02 | | | 118.40 |
| Plus Adjustment Factor | | | | | 9.00 |
| Index Plus Adjustment Factor | | | | | 127.40 |

[FR Doc. 06–6623 Filed 8–1–06; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

**RIN 3206–AK67**

## Cost-of-Living Allowances (Nonforeign Areas); COLA Rate Changes

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to change the cost-of-living allowance rates received by certain white-collar Federal and U.S. Postal Service employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The changes are the result of living-cost surveys conducted in 2002, 2003, and 2004.

**DATES:** *Effective date:* September 1, 2006. *Implementation date:* First day of the first pay period beginning on or after September 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Paquin, (202) 606–2838; fax: (202) 606–4264; or e-mail: *COLA@opm.gov.*

**SUPPLEMENTARY INFORMATION:** Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC, area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. OPM sets the COLA rate for each area based on the results of these surveys.

### Background

The 2002 Caribbean surveys were the first OPM conducted using the new methodology we adopted pursuant to the stipulation of settlement in *Caraballo et al.* v. *United States*, No. 1997–0027 (D.V.I), August 17, 2000. *Caraballo* was a class-action lawsuit in which the plaintiffs contested the methodology OPM used to determine COLA rates. In the *Caraballo* settlement, the parties agreed that if the Government adopted and maintained certain changes in the COLA program, the plaintiffs would be barred from bringing suit over these issues. The complete stipulation for settlement is on OPM's Web site at *http://www.opm.gov/oca/cola/settlement.asp.*

Before the settlement, the parties entered into a memorandum of understanding under which they engaged in a cooperative process to study living-cost and compensation issues. The research was exhaustive and covered essentially all aspects of the COLA program. A summary of that research is available on OPM's Web site at *http://www.opm.gov/oca/cola/research.asp.*

Exhibit A of the *Caraballo* settlement agreement lists 26 ''Safe Harbor Principles'' that outline the changes to which the parties agreed. These principles formed the basis for a new COLA methodology, which OPM incorporated into its regulations. In developing these regulations, OPM consulted with the Survey Implementation Committee (SIC), which was established under the *Caraballo* settlement and is composed of representatives of the parties in *Caraballo.* The SIC in turn consulted with the Technical Advisory Committee (TAC), which was also established under the *Caraballo* settlement and is composed of three economists with expertise in living-cost comparisons. OPM published proposed regulations incorporating the new methodology in the **Federal Register** for notice and comment on November 9, 2001, at 66 FR 56741, and a final rule on May 3, 2002, at 67 FR 22339. The SIC and the TAC also worked closely with OPM in preparing for and implementing the 2002, 2003, and 2004 COLA surveys.

### COLA Surveys

In 2002, OPM surveyed Puerto Rico, the U.S. Virgin Islands, and the Washington, DC, area. We published the results of these Caribbean surveys in the **Federal Register** on February 9, 2004, at 69 FR 6020. In 2003, OPM surveyed Anchorage, Fairbanks, and Juneau, Alaska, and the Washington, DC, area. We published the results of these Alaska surveys on March 12, 2004, at 69 FR 12002. In 2004, OPM surveyed Honolulu County, Kailua Kona, Hilo, Kauai County, Maui County, Guam, and the Washington, DC, area. We published the results of these Pacific surveys on August 4, 2005, at 70 FR 44989. OPM also published the results of new shelter (rent) price analyses for the 2002 Caribbean surveys and the 2003 Alaska surveys in a **Federal Register** notice dated August 4, 2005, at 70 FR 44978.

### COLA Rate Changes

As described in the survey reports, OPM compared the results of each of the COLA area surveys with the results of the DC area survey to derive a living-cost index for each of the COLA areas. We then added adjustment factors as provided in 5 CFR 591.227. The final results indicate an increase in the COLA rates for the U.S. Virgin Islands and Kauai County, Maui County, and Hawaii County, HI; no change in the COLA rates for the Rest of the State of Alaska, Guam and the Northern Mariana Islands, and Honolulu County, HI; and a reduction in the COLA rates for Puerto Rico and Anchorage, Fairbanks, and Juneau, Alaska.

Table 1 shows the old and new COLA rates and the survey living-cost indexes for each area. Under 5 CFR 591.228(c), COLA rate reductions are limited to no more than 1 percentage point per year. The living-cost indexes OPM previously published at 70 FR 44979 and 70 FR 44990 have been amended based on changes we implemented in response to comments we received. These changes are described in the section of this notice on *Hedonic Regressions.* OPM is publishing the new living-cost indexes in a **Federal Register** notice that accompanies this final rule.

TABLE 1.—COLA RATES AND LIVING-COST INDEXES

| Allowance area/category | Old COLA rates (percent) | Previously published living-cost indexes | Revised living-cost indexes | New COLA rates (percent) |
|---|---|---|---|---|
| Puerto Rico | 11.5 | 105.10 | 103.04 | 10.5 |
| U.S. Virgin Islands | 22.5 | 122.84 | 122.53 | 23.0 |
| Anchorage, Alaska | 25.0 | 113.79 | 113.64 | 24.0 |
| Fairbanks, Alaska | 25.0 | 115.61 | 115.62 | 24.0 |

TABLE 1.—COLA RATES AND LIVING-COST INDEXES—Continued

| Allowance area/category | Old COLA rates (percent) | Previously published living-cost indexes | Revised living-cost indexes | New COLA rates (percent) |
|---|---|---|---|---|
| Juneau, Alaska | 25.0 | 118.03 | 118.09 | 24.0 |
| Rest of the State of Alaska | 25.0 | 136.00 | 135.84 | 25.0 |
| Honolulu County, Hawaii | 25.0 | 127.78 | 125.80 | 25.0 |
| Hawaii County, Hawaii | 16.5 | 119.11 | 117.25 | 17.0 [1] |
| Kauai County, Hawaii | 23.25 | 130.58 | 127.63 | 25.0 |
| Maui County, Hawaii | 23.75 | 134.49 | 131.50 | 25.0 |
| Guam and the Northern Mariana Islands | 25.0 | 127.65 | 127.40 | 25.0 |

The 2004 Pacific survey report indicated a COLA rate increase for Hawaii County, HI, from 16.5 percent to 19 percent. OPM, however, refined the rental survey hedonic regressions after taking into consideration comments received. The refined methodology results in a 17 percent COLA rate for Hawaii County. The refinements OPM adopted pursuant to comments are discussed in the section on *Hedonic Regressions*.

OPM published a proposed rule in the **Federal Register** on August 4, 2005, at 70 FR 44976, inviting comments on the COLA rate changes. Approximately 2,400 commenters responded to the proposed rule. Most of the comments were from Federal employees or unions representing Federal employees. Many of the commenters expressed opposition, without further comment, to the planned COLA rate reductions. Other commenters addressed specific issues and concerns with the COLA surveys. One agency and two commenters concurred with the rate changes. We summarize and evaluate the substantive comments in the ''Discussion of Comments'' section that follows.

**Discussion of Comments**

*Rising Living Costs*

Many of the commenters said OPM should not reduce COLA rates because their living costs were increasing. A number of commenters provided or referred to publications showing rising costs in their COLA area. By law, OPM must compare costs in the COLA areas with costs in the Washington, DC, area and adjust COLA rates according to the relative difference. Therefore, if living costs rise faster in the COLA area than in the DC area, we increase the COLA rate subject to the statutory maximum. If living costs rise faster in the DC area than in the COLA area, we reduce the COLA rate, but by no more than 1 percentage point per year, as provided by 5 CFR 591.228(c).

Numerous commenters noted that certain costs have increased since OPM conducted the survey in their COLA area and that the survey data were outdated. Many commenters requested that OPM survey again. They cited the cost of gasoline, housing, utilities, grocery items, medical needs, various fees and taxes, and other items. OPM recognizes that prices for various items will increase in the COLA areas and/or the DC area between surveys. We collect prices in each survey area every 3 years on a rotating basis according to a schedule agreed upon by the parties in the *Caraballo* settlement. Beginning with the publication of the 2005 Caribbean and DC COLA survey results, OPM will adjust price indexes for areas not surveyed based on the relative change in the Consumer Price Index (CPI) for the COLA area compared with the CPI for the Washington, DC, area. Pursuant to the *Caraballo* settlement, we are not implementing CPI adjustments at this time.

Several commenters said their current living costs are considerably higher than living costs at their previous duty station in the lower 48 States. By law, OPM must compare the cost of living in the COLA areas with the cost of living in the Washington, DC, area.

*Consumer Goods*

Several commenters noted that some goods available in the contiguous States are not available in their COLA area. Other commenters said certain items, such as water softeners, are necessary in their COLA area, but not in the DC area. Two commenters said they pay for certain services, such as garbage collection, that are covered by taxes in some other areas. Issues such as these were discussed extensively during the COLA litigation. As a result of the *Caraballo* settlement and as provided by 5 CFR 591.227, OPM adds an adjustment factor to the price index for each COLA area to reflect differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area. With regard to the above comments, we note that several water softener companies do business in the DC area and assume this reflects a need for some DC area residents to have water softeners. We also note that residents in several communities in the DC area pay directly for garbage collection.

One commenter compared prices for a number of items at a department store in Puerto Rico with mainland prices listed on the store's Internet site, showing the prices for these items in Puerto Rico to be higher. The same commenter also remarked on the high cost of vehicles, including shipping, in Puerto Rico. Other commenters also noted that many consumer goods must be shipped to COLA areas at high cost. In each of the annual surveys, OPM contacted over 900 outlets and collected more than 4,600 prices on over 240 items representing typical consumer purchases. We surveyed the final cost to the consumer of services or items, including automobiles. The final cost includes any overhead, transportation and shipping costs, taxes, competition, and other price influences. Additionally, OPM surveyed catalog prices for a number of items and included in the price the costs for shipping, sales tax, and excise tax, which are often higher in the COLA area relative to the Washington, DC, area.

*Inequity Among Areas*

Many commenters claimed the COLA rate reductions in Puerto Rico were discriminatory but did not elaborate. Some commenters, however, noted that Puerto Rico historically has had the lowest COLA rate of all of the COLA areas.

OPM conducts COLA surveys using the same methodology in all areas. For many years, OPM's surveys have indicated that COLA rates should be lower in several COLA areas. However, litigation and legislation barred OPM from implementing COLA rate reductions. The bars have now expired, and we are implementing rate reductions in certain areas. In the future, it is possible that there may be more differentiation among COLA rates than there is today.

Several commenters questioned the data collectors' familiarity with Puerto

Rico and knowledge of the Spanish language. OPM used data collectors in Puerto Rico who spoke Spanish and had formerly resided in Puerto Rico. In addition, the two non-rental OPM data collectors were accompanied by observers from the Puerto Rico COLA Advisory Committee (CAC), which is composed of current Federal employees who live in Puerto Rico and speak Spanish.

Before each survey, OPM establishes a CAC in each of the survey areas. As described in 5 CFR 591.243, each CAC is composed of approximately 12 agency and employee representatives from the survey area and two representatives from OPM. To help OPM prepare for the COLA surveys, OPM and the CACs held 3-day meetings in each area to be surveyed to plan the COLA surveys. During the survey, the CAC members assisted OPM staff in collecting non-rental data, and after the survey the CAC members had the opportunity to review all of the survey results, including the results of the rental survey. Although CAC members helped plan the rental survey and had the opportunity to review the rental survey results in detail, CAC members did not participate in the rental data collection as observers.

A local union in Puerto Rico stated that in the rental survey, OPM treated Puerto Rico COLA employees in a disparate fashion because of national origin and without regard to unique linguistic and cultural differences. The union cited misspellings in the rental data as evidence that the data collectors encountered a serious language barrier. The OPM contractor that surveyed rental properties in Puerto Rico also employed Spanish-speaking data collectors, some of whom were or are residents of Puerto Rico. Although there may have been misspellings in business names and street addresses, we believe the overall quality of the rental data was good and reflected the COLA survey's specifications for rental prices in Puerto Rico.

*Rental Surveys*

OPM also received from the local union in Puerto Rico extensive comments on the Caribbean and DC area rental surveys. A large number of commenters wrote in support of the union's comments, made similar comments, or addressed other issues relating to the rental surveys. Many of the comments addressed 2005 survey issues based on pre-publication rental data OPM provided to the Puerto Rico CAC for review. Because we have not yet published the 2005 survey results and because the Puerto Rico rate reduction is based on the 2002 Caribbean survey results, we are responding in this final rule to the comments as they apply to the 2002 survey.

The union and other commenters asserted that the rental survey did not accurately reflect the areas or the types of housing units where Federal employees live in Puerto Rico, was conducted in a careless and negligent manner, and was conducted differently in Puerto Rico than in the DC area and the U.S. Virgin Islands. Other commenters in Puerto Rico charged that the rental survey was inaccurate, unfair, and discriminatory, and many challenged the veracity, reliability, and adequateness of the rental data.

OPM hired an experienced contractor to collect rental data in each area, and the data were collected in essentially the same manner in all areas. In Puerto Rico, we directed the contractor to collect in the San Juan/Caguas area and in areas east of San Juan, including the Roosevelt Roads area. We selected these areas based on the results of the 1992/93 Federal Employee Housing and Living Patterns Survey, which provided information on where Federal employees live. As described in the survey report, OPM collected over 80 housing characteristics on more than 400 rental observations throughout this area of Puerto Rico and over 900 observations in the Washington, DC, area. The housing characteristics were described in Appendix 4 of the survey report (69 FR 6047).

Pursuant to the *Caraballo* settlement, OPM used hedonic regression analysis, which is a type of statistical analysis, to compare rents in the COLA areas with rents in the DC area. The use of hedonic regressions allows OPM to hold quantity and quality of housing constant to make rental rate comparisons. The hedonic regressions are described in the survey notice at 69 FR 6029 and Appendix 5 at 69 FR 6048. (As described in the notice of August 4, 2005, at 70 FR 44798, OPM revised these hedonic regressions and published new rent indexes.) Therefore, we believe the rental surveys and analyses were conducted in a fair and professional manner in all of the COLA areas.

The union also noted that a high percentage of the Puerto Rico observations were gathered from ''drive by'' listing sources. The contractor collects information from five types of sources: local newspaper/publication, Internet, agent/broker, drive-by/sign posted, and other. The contractor collected data from all types except ''other'' in both Puerto Rico and the DC area, but the distribution of observations by listing source type varied by area. To determine whether listing source influenced rental rates, OPM added listing source as a variable in the hedonic regression analysis. We found that the variable was statistically significant, but that it raised the standard error of the survey area parameter estimates. Therefore, we are not using listing source as a variable in the final hedonic regression. (See the section of this notice on *Hedonic Regressions*.)

The union also stated that a considerable percentage of the rental observations were from individuals who refused to provide some or all self-identifying information (*i.e.,* the individual's name and/or his/her home or business address). Approximately 30 percent of the rental observations in Puerto Rico were from such individuals, and approximately 4 percent of the observations in the DC area were from such individuals. As with listing sources, OPM added self-identification refusal as a variable to the hedonic regression analysis. We found that self-identification refusal was not a statistically significant variable and are not using it in the final hedonic regression.

The union and a number of other commenters believe OPM should have allowed observers to accompany the contractor on the rental surveys in Puerto Rico. The contract did not provide for rental data collection observers to accompany contractor data collectors, and we determined that a contract modification to allow observers would increase contract costs significantly. We are currently exploring with the contractor how rental data collection observers might be involved in future COLA surveys.

Various commenters noted expenses that affect the cost of shelter in their area. A number of commenters said employees in Puerto Rico pay more for living in gated communities or incur costs for security systems because of the high crime rate. One commenter remarked on higher mortgage rates in Puerto Rico. A commenter from Alaska noted that some properties require water wells. To the extent that these necessities influence the rental rate for a property, they are captured by the rental survey. The rental survey also captures any separate security fees added to rents.

One commenter asked why the COLA survey did not compare homeowner data. Under the *Caraballo* settlement, the parties agreed to adopt a rental equivalence approach similar to the one the Bureau of Labor Statistics uses for the Consumer Price Index. Rental

equivalence compares the shelter value (rental value) of owned homes, rather than total owner costs, because the latter are influenced by the investment value of the home (*i.e.,* what homeowners hope to realize as a profit when they sell their homes). As a rule, living-cost surveys do not compare how consumers invest their money.

The same commenter said one of the apartment units surveyed in the 2003 Juneau survey was listed as 960 square feet, but she said the property was actually 690 square feet. OPM asked the contractor to verify the information. The contractor found that the units in this apartment complex varied in size and that some are 690 square feet, while others are 960 square feet. The unit in the Juneau rental database was correctly identified at 960 square feet.

The same commenter also objected to assigning all two-bedroom apartments to the same class. For the purposes of drawing the rental survey sample, OPM classifies rental units by location into six broad categories. The six categories are as follows: Class A—four bedroom, single family unit not to exceed 3200 square feet; Class B—three bedroom, single family unit not to exceed 2600 square feet; Class C—two bedroom, single family unit not to exceed 2200 square feet; Class D—three bedroom apartment unit not to exceed 2000 square feet; Class E—two bedroom apartment unit not to exceed 1800 square feet; and Class F—one bedroom apartment unit not to exceed 1400 square feet. OPM uses this information only to draw the survey sample. During the survey, OPM obtains information on more than 80 housing characteristics, including type, actual square footage, number of bedrooms and bathrooms, and other characteristics of each rental unit. Instead of comparing houses within each of the six broad classes, we use the detailed characteristics of each rental unit and hedonic regressions as described below to hold these characteristics constant between the COLA and Washington, DC, area to make rental price comparisons.

One commenter asserted that OPM's contractor determined most square-footage measurements without visiting the property. OPM's contractor visited every property and used, where appropriate, special equipment to estimate the square footage of living space. The contractor also used living-space information provided by brokers, realtors, owners, property tax records, and other reliable sources.

*Hedonic Regressions*

As described in the previous section, OPM received several comments concerning the rental survey, some of which led us to revisit the hedonic regression analyses we use to compute rental indexes. As described at 69 FR 6029 and Appendix 1 at 70 FR 44979, OPM used hedonic regression analysis, which is a type of multiple linear regression analysis, to compare rents in the COLA areas with rents in the DC area. Multiple linear regression is used to determine how the dependent variable (in this case, rent) is influenced by one or more independent variables (in this case, the characteristics of the rental unit including some aspects of the neighborhood). As is common in this type of analysis and as was done in the research leading to the *Caraballo* settlement, OPM used semi-logarithmic regressions. The regression produces parameter estimates for each independent variable, including survey area. A parameter estimate is an estimate of the influence of rental characteristics or variables on rent of a dwelling unit. Variables may be continuous—like square footage, number of bedrooms, or number of bathrooms—or class variables, like external condition (good, fair, etc.), availability of air conditioning (yes, no), or the particular COLA survey area in which the rental unit is located. For example, ''Puerto Rico,'' ''St. Croix,'' and ''St. Thomas/St. John'' are the Caribbean COLA survey area class variables for which parameter estimates are computed.

COLA survey area parameter estimates are of greatest interest in the COLA rental model because, once converted, they become the survey area rent index holding all of the other rental characteristics in the regression constant. In other words, the exponent of the survey area parameter estimate (i.e., after the estimate is converted from natural logarithms with a correction for a slight bias caused by the use of logarithms) multiplied by 100 is the survey area's rent index. This index reflects the difference in rents for the COLA survey area relative to the Washington, DC, area, while (in effect) holding other significant housing characteristics constant.

To select the variables to use in the model, OPM adopted a methodology developed by the TAC and OPM, in consultation with the SIC. The methodology OPM used to produce the rent indexes published in the notices (70 FR 44978 and 70 FR 44989) that accompanied the proposed rule was an objective, multi-step process by which OPM eliminated variables that were not statistically significant. After reviewing the results of hedonic regressions OPM performed in response to comments we received on the rental survey, the TAC recommended that we refine the methodology to also eliminate variables that decreased the precision of the rent index. Therefore, OPM modified the variable selection process to eliminate variables that are not statistically significant and/or decrease the precision of the rent index. The refined methodology produces an improved hedonic regression model with somewhat different rent indexes than those shown in the survey notices. (See notice that accompanies this rule.)

A commenter from Puerto Rico supported in general the use of hedonic techniques, but was critical of the variables in the OPM regression model. The commenter noted a number of characteristics he thought OPM should have included. OPM collected most of the characteristics the commenter suggested. (See Appendix 4 at 69 FR 6047.) We then processed the characteristics using the methodology described above and included many of them (*e.g.,* square footage, number of bedrooms and bathrooms) in the final hedonic regression analysis. Therefore, although OPM collects more than 80 rental unit characteristics, the multi-step process described above produces a hedonic regression model with fewer characteristics, *i.e.,* those that are statistically most important and increase precision in terms of the rent indexes.

OPM does not collect some of the variables (*e.g.*, occupancy ratio) noted by the commenter. These variables are often included in studies related to the appraised value of properties, particularly apartment complexes, because they might be important to a prospective commercial buyer. We do not collect information such as occupancy ratios, however, because they are not important for renters of single units within a complex.

The commenter noted that location is an important variable and recommended collecting information on neighborhoods and ''distance to major employment centers.'' OPM added distance as a variable in the hedonic regression analysis by computing the distance from each rental observation to the major Federal building or intersection in each survey area. We then treated distance as any other variable in the model and examined its significance and its impact. As it turned out, distance did not enter as a variable in any of the final models because it either was not significant or decreased the precision of the rent index.

With regard to neighborhoods, as shown in Appendix 4 at 69 FR 6047, OPM already collects information that reflects the quality of the neighborhood.

We use information from the Bureau of the Census to introduce additional variables to the hedonic regressions that may reflect the quality of the neighborhood. To do this, we identify the census tract within which each rental observation is found and then add variables, such as median income, percent school age persons, and percent of people in the area with B.A. degrees or higher, to the hedonic regressions. We process these characteristics using the methodology described above and those that are statistically significant and increase precision are used in the final hedonic regression analysis.

OPM was not able to add census tract data to the 2002 survey. We did not have longitude and latitude coordinates for the 2002 rental observations, and we are not aware of any software product that could provide this information using Puerto Rico and U.S. Virgin Islands addresses. We note, however, that we collected longitude and latitude information in the 2005 Caribbean survey, and we anticipate using census tract data in the analysis of the rental survey results.

The commenter described a type of logit model that appraisers find useful in distinguishing ''atypical'' apartment complexes—possibly an important tool in the appraisal field. Further, the logit model is useful when the dependent variable is limited in range (*e.g.,* the probability of buying an apartment building of given characteristics) but is not appropriate for a continuous variable, like rents for similar accommodation across cities, which is the goal of OPM analysis.

The commenter said OPM did not say which statistical package it used and did not describe its analyses. As stated at 70 FR 44978, OPM used SAS, which is a common proprietary statistical package. Appendices 1 and 2 at 70 FR 44979 show the details of the regression models OPM used and the results of the regressions.

The commenter also said OPM should provide the statistical procedures used for the hedonic regressions to the CACs for review. OPM provides the CACs with COLA survey materials that explain regression analysis, contain graphs and charts, and provide the same details about the rental survey and hedonic regressions OPM publishes in its **Federal Register** notices. In addition, OPM staff meets with the CACs to explain the procedures used, go over the hedonic regression results, and answer questions.

*Locality Pay and Retirement*

Numerous commenters said Federal employees in the COLA areas should receive locality pay. Several requested that OPM replace the COLA rate with locality pay or take DC area locality pay into consideration when setting COLA rates. Two commenters noted that the Rest of U.S. (RUS) locality pay rate is higher than the COLA rate in Puerto Rico. One commenter said OPM should set the lowest COLA rate to be equivalent to the RUS locality pay rate. Several commenters noted that locality pay is included in base pay for retirement purposes, while COLAs are not included. One commenter said that not considering COLAs in retirement calculations creates a disincentive to retire in a COLA area. Another commenter said that employees in the COLA areas have to save more for retirement.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) authorizes locality pay only for Federal employees in the contiguous 48 States and Washington, DC. OPM cannot consider DC area locality pay or set COLA rates at certain locality pay levels because doing so would be tantamount to implementing locality pay outside the 48 States. Additionally, OPM cannot credit COLAs in the retirement calculation because 5 U.S.C. 8331(3) and 8401(4) exclude allowances from base pay for Federal retirement purposes. Changes in law would be required to extend locality payments to Federal employees in the COLA areas or to include COLAs in base pay for Federal retirement purposes.

*Recruitment and Retention*

Many commenters believe COLA reductions would cause recruitment and retention problems. OPM is concerned about the Government's ability to recruit and retain a well-qualified workforce and notes that the Government has several pay authorities that are available to address recruitment and retention problems. Among these are special salary rates and recruitment, retention, and relocation incentives.

*Financial Effect*

Many commenters were concerned about the impact of COLA reductions on personal financial commitments, such as mortgages, and other financial obligations. Several commenters stated that the reductions would have an adverse effect on the local economy of the COLA area. As noted above, OPM's authority to set COLA rates is established in 5 U.S.C. 5941. However, our regulations provide that COLA rates may be reduced by no more than 1 percentage point in any 12-month period, which serves to minimize the financial impact of COLA rate reductions.

*Utility Costs*

Several commenters remarked that water, electricity, and other utility costs are high in Alaska and Puerto Rico. One commenter noted that increasing energy costs also affect costs for shelter, transportation, and consumer goods. OPM surveyed utility costs and included these costs in the price comparisons. We also surveyed costs for shelter, transportation, and consumer goods and services. The prices of goods and services include any energy and/or local transportation costs associated with making these items available for sale.

Some commenters reported that water utility prices have or are going to increase significantly in Puerto Rico. To the extent that such increases occur, they will be reflected in the results of the 2005 survey or in subsequent surveys and/or adjustments.

*Transportation*

Several commenters noted the cost of long distance travel from the COLA areas to areas in the continental United States. The commenters requested that OPM consider time, distance, and excessive travel expenses in setting COLA rates. Two other commenters noted higher air transportation costs in Juneau because of the lack of airline competition.

The COLA methodology takes travel expenses into account in two ways. First, OPM compares the cost of air travel from the various COLA areas to common destinations in the contiguous States with the cost of air travel from the DC area to those same destinations. This would capture any higher ticket prices that result from reduced competition. Second, as provided in 5 CFR 591.227, OPM adds to the overall price index for the COLA area an adjustment factor that reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area. This adjustment factor is designed to address such considerations as the difficulty of traveling long distances.

*Medical Services*

Several commenters believe the survey underestimated the cost and restricted availability of medical services in Alaska. They also noted that doctor visits and dental care are more expensive in the COLA areas. One commenter said none of the Federal health benefit plans in Juneau offer supplemental dental coverage. Another commenter felt that medical care in

Juneau was limited, resulting in higher health care costs and inferior health care. Several commenters said there was a need for costly travel outside the area to obtain some medical services.

OPM surveys the prices of several medical services (including dental services) and items in each COLA area and in the DC area. The medical services index reflects any relatively higher local prices. The availability of medical services is not something OPM prices or quantifies. Instead, it is part of the adjustment factor OPM adds to the price index to reflect differences in need, access to, and availability of goods and services, and quality of life in the COLA areas relative to the Washington, DC, area.

One commenter noted that there were no Health Maintenance Organizations (HMOs) in Juneau. As described at 69 FR 12005, OPM compared average health insurance premium costs in the COLA area with average health insurance premium costs in the DC area. Therefore, the health insurance premium index reflects higher local costs to the extent that an area has only higher cost plans available (i.e., to the extent HMOs are not available).

*Quality of Life*

A number of commenters stated that the COLA reductions would affect their quality of life. One commenter from Alaska said the COLA is an incentive that helps with the isolation, extreme climate, support issues, and darkness. As noted under the *Transportation* section, OPM adds adjustment points in part to compensate for differences in quality of life.

*Taxes*

Several commenters mentioned increased sales, excise, and local taxes in Puerto Rico. Another commenter noted that Federal employees in North Pole, Alaska, must pay a sales tax. OPM adds sales tax and, where applicable, excise and other taxes to the prices it collects. In Puerto Rico, excise taxes paid by importers and distributors are part of the price for the item. In the case of catalog items, OPM adds such taxes as applicable. To the extent any recent tax increases in Puerto Rico have occurred, they will be reflected in the results of the 2005 survey or in subsequent surveys and/or adjustments.

*Local Conditions*

Several commenters from Puerto Rico noted additional costs faced by Federal employees on the island because of hurricanes and blackouts. Among the costs mentioned were generators, special water tanks, storm shutters, bottled water, road damage, electrical equipment repair, and higher property insurance. OPM discusses property insurance under the heading *Insurance*. As noted under the *Transportation* section, OPM adds adjustment points pursuant to 5 CFR 591.227 in part to compensate for differences in quality of life.

A number of commenters also remarked on weather conditions in Alaska. They noted additional costs, such as four-wheel drive, studded tires, winter clothes, high electric and heating bills, and vehicle maintenance, because of the long winters, icy roads, and temperatures that sometimes extend to 40 degrees or more below zero. As described in Appendix 3 at 69 FR 12027, OPM priced in Alaska a four-wheel drive vehicle with an engine block heater and regular and studded tires. We also priced parkas, boots, and other cold weather items. The utility model we use reflects Alaska's higher home energy costs.

*Insurance*

Several commenters noted high property insurance rates as a result of escalating housing prices, hurricanes, or property located in flood zones. OPM uses a rental equivalence approach to determine shelter costs. The rental equivalence approach compares the rental values of homes. Home insurance is implicit in these values. Therefore, we do not survey any type of homeowner insurance, but we do survey renter insurance. In doing so, we include the price of any special riders necessary to cover hurricane or typhoon damage.

*Education*

Several commenters cited the necessity for placing children in private schools in Puerto Rico. The commenters noted language, quality, and danger issues with the public schools. One commenter said that the quality of Puerto Rico public schools is poor, while the DC area has some of the best public schools in the nation. Another commenter said employees in Puerto Rico who want to compete for employment opportunities in the mainland must place their children in costly English language private schools. Several commenters remarked on the high cost of private school tuition, school supplies, and various school fees in Puerto Rico. Other commenters said the Department of Defense school in San Juan is not available to many Federal employees, so they must pay for private schools. One commenter from the island of Hawaii said school choices and day care facilities there are limited, and the only private school for high school students is in Waimea. Another commenter said private schools in Juneau are limited, increasing costs for those who must use out-of-state private schools.

OPM surveyed K–12 private education in the COLA and DC areas and computed an average tuition price that reflected all grade levels. Because not everyone sends children to private school, we made an additional special adjustment for K–12 education by applying ''use factors.'' These use factors reflect the relative extent to which Federal employees make use of private education in the COLA and DC areas. OPM described the process used for K–12 private education in the Caribbean region at 69 FR 6030, in Alaska at 69 FR 12007, and in the Pacific region at 70 FR 44995.

Two commenters said many Federal employees in Puerto Rico send their children to colleges in the continental United States. A commenter from Alaska said there were limited colleges and universities in Alaska, so many employees send their children to colleges in the lower 48 States and incur extra costs for non-resident tuition and transportation. Another commenter said tuition at the University of Puerto Rico will be increasing. Two commenters said Federal employees and their families are not eligible for student grants in Puerto Rico.

OPM does not measure the price of college and university education because where employees send their dependents to school is often a matter of personal preference. For example, many Federal employees in the Washington, DC, area send their children to colleges and universities outside the DC area. To the extent OPM leaves an item, such as college education, out of the COLA model, the effect is as if OPM included it in the model at the overall price index for the area. Therefore, if prices are generally higher in a COLA area relative to the DC area, the implicit assumption is that college and university prices are higher to the same extent. Any additional costs would be reflected in the adjustment points added pursuant to 5 CFR 591.227.

*Geographic Coverage*

One commenter said there should be separate COLA rates for the east (Kona) and west (Hilo) sides of the island of Hawaii because prices are not equal. OPM does not plan to split Hawaii County into separate areas at this time, but OPM may reconsider that decision after additional surveys have been completed using the methodology

adopted pursuant to the *Caraballo* settlement.

One commenter requested that OPM consider Eielson Air Force Base as part of the Rest of Alaska COLA area. The commenter noted that Eielson is 26 miles from Fairbanks and that it is dangerous to drive that distance for groceries, the hospital, or the airport during the winter months. The commenter suggested changing the distance parameter for Fairbanks to 20 miles. As stated in 5 CFR 591.206(b), the head of a department or agency must submit a request to OPM to initiate any reconsideration of the definition of a COLA area. We note that North Pole, AK, is only 8 miles from Eielson, and that North Pole is part of the Fairbanks survey area. OPM surveys a supermarket and other businesses in North Pole and includes these in the calculation of the Fairbanks living-cost index. We do not believe it would be appropriate to change the definition of the Fairbanks, AK, COLA area.

Another commenter said the cost of living in Girdwood, AK, which is 40 miles outside of Anchorage, is significantly higher than in Anchorage. The commenter asked that OPM consider the effect of the COLA reduction on employees living and working in outlying communities of Anchorage. As noted above, the head of a department or agency must submit a request to OPM to initiate any reconsideration of the definition of a COLA area.

One commenter noted that 5 U.S.C. 5941 states that COLAs are based on ''living costs substantially higher than in the District of Columbia.'' The commenter said the area OPM uses for comparison includes areas in addition to the District of Columbia. The commenter referred also to Executive Order 10000, which uses the term ''Washington, DC, area'' but precedes it with the phrase ''subject to applicable law.'' The commenter requests that OPM survey only the District of Columbia. The President directs OPM in Executive Order 10000 to designate nonforeign areas at locations in which living costs are substantially higher than in *the Washington, DC, area* and set COLA rates for such areas based on these higher living costs. OPM does not plan to limit the scope of the Washington, DC, area survey to the District of Columbia.

*Survey Rates*

An agency and one other commenter requested that OPM address the total anticipated COLA rate reductions projected by the area surveys. OPM conducts COLA surveys once every 3 years and will adjust COLA rates pursuant to 5 CFR 591.224, beginning with the publication of the results of the 2005 Caribbean survey. Therefore, we cannot predict what COLA rates will be in future years. However, with each survey notice OPM does publish final living-cost indexes that can easily be converted to hypothetical COLA rates (prior to the 1 percentage point limitation on COLA rate reductions) with the application of 5 CFR 591.228(a). This essentially involves converting the living-cost index to a percentage and rounding the result to the nearest whole percentage point. Table 1 includes the indexes that can be used for this purpose. However, it should be noted that future surveys and adjustments will likely produce different results.

*Employee Involvement*

Several commenters believe employees from their area were not involved in the COLA surveys. As noted above, OPM established and worked with local COLA Advisory Committees (CACs) in each survey area.

One commenter asked who represented Juneau on the CAC. The Juneau CAC was composed of representatives from the Juneau Federal Executive Association, the Juneau COLA Defense Committee, the National Federation of Federal Employees, the Indian Educators Federation-American Federation of Teachers, the National Weather Service Employees Organization, Professional Airways Systems Specialists, the Department of Agriculture, the Department of Commerce, the Department of the Interior, the Department of Transportation, and OPM.

The same commenter wanted to know more about Federal employee input into the COLA survey, units of measure, and formulas used in analyzing the data. Federal employees serve on both the SIC and the CAC. As explained in the *Background* section, the SIC worked closely with OPM as we developed new COLA regulations pursuant to the *Caraballo* settlement. The composition of the SIC is described in the *Caraballo* stipulation for settlement, which is available on OPM's Web site at *http://www.opm.gov/oca/cola/settlement.* The regulations we adopted describe the methodology and formulas used to analyze the survey data. These regulations can be found on OPM's Web site at *http://www.opm.gov/oca/cola/RegsRpts.asp.*

As also explained in this final rule OPM worked closely with the CACs to plan, conduct, and review the results of the COLA surveys. The CACs are described in OPM regulations at 5 CFR 591.240 to 591.244. Additional information about the surveys and analyses used may be found in the survey reports, which are on OPM's Web site at *http://www.opm.gov/oca/cola/index.asp.*

*Military COLA*

Several commenters thought the reductions in the proposed regulation applied to the military COLA. These reductions apply only to the COLA rates paid to certain civilian white-collar Federal employees paid under the General Schedule and similar pay plans. Three commenters remarked on the discrepancy between the civilian and military COLAs. The Department of Defense sets the military COLA using a different methodology as authorized under separate law. The methodology for the civilian nonforeign area COLA derives from 5 U.S.C. 5941, Executive Order 10000, and the *Caraballo* settlement.

*Military Post Privileges*

One commenter said all Federal employees should be allowed to shop at military commissaries/exchanges. The Department of Defense operates commissaries and exchanges. OPM does not have authority to regulate commissary/exchange access.

*Federal Wage System Employees*

One employee felt Federal Wage System (FWS) employees should receive the nonforeign area COLA. The law that authorizes nonforeign area COLAs (5 U.S.C. 5941) allows payment of COLAs to employees whose rates of pay are set by statute. When the COLA law was enacted, FWS pay was set administratively according to local prevailing rates, rather than by statute. Currently, FWS rates of pay are not set by statute, and OPM cannot extend COLAs to FWS employees.

*Communication of Changes*

Three commenters thought OPM did not properly communicate the COLA reductions to Federal employees. The Administrative Procedure Act requires agencies to publish regulations in the **Federal Register** as a means of notifying the public of rule changes. In addition to publishing the proposed regulation in the **Federal Register**, OPM distributed the regulation to agencies with a notice to be posted on employee bulletin boards. OPM also summarized and linked to the regulations on its Web site at *http://www.opm.gov/fedregis/html/aug05.asp* and provided copies to COLA Advisory Committee members in each area. As noted above, OPM received

more than 2,000 responses from COLA area employees during the public comment period on the proposed regulations.

*Correction*

One commenter pointed out an error in the shelter index for Kauai in Appendix 7 of the 2004 Survey Report. This error was made in typesetting the survey notice. The ''1'' that precedes the PEG index belongs to the previous column, so that the PEG Weight should show ''89.01'' and the PEG Index should show ''118.21.'' Because it was a typesetting error, it does not affect OPM's calculations for Kauai.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 591**

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, the Office of Personnel Management amends subpart B of 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

■ 1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

■ 2. Revise appendix A of subpart B to read as follows:

### Appendix A to Subpart B of Part 591—Places and Rates at Which Allowances are Paid

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

| Geographic coverage | Allowance Rate (percent) |
|---|---|
| State of Alaska: | |
| City of Anchorage and 80-kilometer (50-mile) radius by road | 24.0 |
| City of Fairbanks and 80-kilometer (50-mile) radius by road | 24.0 |
| City of Juneau and 80-kilometer (50-mile) radius by road | 24.0 |
| Rest of the State | 25.0 |
| State of Hawaii: | |
| City and County of Honolulu | 25.0 |
| Hawaii County, Hawaii | 17.0 |
| County of Kauai | 25.0 |
| County of Maui and County of Kalawao | 25.0 |
| Territory of Guam and Commonwealth of the Northern Mariana Islands | 25.0 |
| Commonwealth of Puerto Rico | 10.5 |
| U.S. Virgin Islands | 23.0 |

[FR Doc. 06–6624 Filed 8–1–06; 8:45 am]

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Federal Register

**Wednesday,**
**August 2, 2006**

**Part IV**

# Environmental Protection Agency

**40 CFR Part 180**

**Alachlor, Chlorothalonil, Methomyl, Metribuzin, Thiodicarb; Order Denying Petition To Revoke Tolerances; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[EPA–HQ–OPP–2005–0050; FRL–8079–8]**

## Alachlor, Chlorothalonil, Methomyl, Metribuzin, Thiodicarb; Order Denying Petition To Revoke Tolerances

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

**ACTION:** Order.

**SUMMARY:** In this Order, EPA denies, in part, a petition requesting the modification or revocation of the pesticide tolerances for alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb established under section 408 of the Federal Food, Drug, and Cosmetic Act (''FFDCA''). The petition was filed on December 17, 2004, by the States of New York, California, and Connecticut, and the Commonwealth of Massachusetts (''the States''). In their petition, the States contend that the risks posed by these pesticide tolerances must be assessed utilizing the additional tenfold (10X) safety factor for the protection of infants and children and that once this additional factor is included the challenged tolerances no longer meet the safety standard under FFDCA section 408. EPA is denying the petition to modify or revoke as to the tolerances for the pesticides alachlor, chlorothalonil, and metribuzin. EPA is deferring action on the petition as regards the tolerances for methomyl and thiodicarb given the ongoing Agency proceedings to address the safety of these pesticides.

**DATES:** This Order is effective August 2, 2006. Objections and requests for hearings must be received on or before October 2, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0050. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Public Docket, in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Terria Northern, Special Review and Reregistration Division, (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–7093; fax number: 703–308–7070; e-mail address: *northern.terria@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in [insert appropriate cite to either another unit in the preamble or a section in a rule]. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0050 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 2, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2006-0050, 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.

### II. Introduction

*A. What Action Is the Agency Taking?*

In this Order, EPA denies, in part, a petition requesting the modification or revocation of the pesticide tolerances for alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb established under section 408 of the FFDCA. The petition was filed on December 17,

2004, by the States of New York, California, and Connecticut, and the Commonwealth of Massachusetts (''the States'') (Ref. 1). In their petition, the States contend that EPA is lacking data for each of the five pesticides on developmental neurotoxicity, endocrine effects, and/or cumulative effects of exposure to pesticides with a common mechanism of toxicity. The States argue that this lack of these data mandates that EPA retain the additional tenfold (10X) safety factor for the protection of infants and children. The States further allege that once the 10X safety factor is retained, the challenged tolerances no longer meet the safety standard under FFDCA section 408 and must be modified or revoked.

In today's Order, EPA is denying the petition to modify or revoke as to the tolerances for the pesticides alachlor, chlorothalonil, and metribuzin. As to alachlor and metribuzin, EPA is denying the petition because the tolerances for these pesticides would continue to meet the safety standard even if the additional 10X safety factor sought by the States is applied. For chlorothalonil, EPA has determined, after reviewing the legal and factual contentions of the States, that there is reliable data showing that the additional 10X safety factor is not needed to protect the safety of infants and children. EPA is deferring action on the petition as regards the tolerances for methomyl and thiodicarb given the ongoing Agency proceedings to address the safety of these pesticides.

*B. What Is the Agency's Authority for Taking This Action?*

Under section 408(d)(4) of the FFDCA, EPA is authorized to respond to a section 408(d) petition to revoke tolerances either by issuing a final rule revoking the tolerances, issuing a proposed rule, or issuing an order denying the petition.

## III. Statutory and Regulatory Background

*A. Statutory Background*

1. *In general.* EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration and the U. S. Department of Agriculture. Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (''FQPA''), which added the provisions discussed below establishing a detailed safety standard for pesticides, additional protections for infants and children, and the estrogenic substances screening program.

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), (7 U.S.C. 136 et seq). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of Federal law. (7 U.S.C. 136j(a)(2)(G)). In the FQPA, Congress integrated action under the two statutes by requiring that the safety standard under the FFDCA be used as a criterion in FIFRA registration actions as to pesticide uses which result in dietary risk from residues in or on food, (7 U.S.C. 136(bb)), and directing that EPA coordinate, to the extent practicable, revocations of tolerances with pesticide cancellations under FIFRA. (21 U.S.C. 346a(l)(1)).

2. *Safety standard for pesticide tolerances.* A pesticide tolerance may only be promulgated by EPA if the tolerance is ''safe.'' (21 U.S.C. 346a(b)(2)(A)(i)). ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408(b)(2)(D) directs EPA, in making a safety determination, to:

> consider, among other relevant factors- . . .
>
> (v) available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity; . . .
>
> (vi) available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources.
>
> (viii) such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. . . .

(21 U.S.C. 346a(b)(2)(D)(v), (vi) and (viii)).

Section 408(b)(2)(C) requires EPA to give special consideration to risks posed to infants and children. Specifically, this provision states that EPA:

> shall assess the risk of the pesticide chemical based on-- . . .
>
> (II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals; and
>
> (III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity. . . .

(21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)). This provision further directs that ''[i]n the case of threshold effects, . . . an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' (Id.). [The additional safety margin for infants and children is referred to throughout this Order as the ''children's safety factor.'']

3. *Procedures for establishing, amending, or revoking tolerances.* Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, the rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)). Once EPA takes final action on the petition by either establishing, amending, or revoking the tolerance or denying the petition, any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

4. *Estrogenic Substances Screening Program.* Section 408(p) of the FFDCA

creates the estrogenic substances screening program. This provision gives EPA 2 years from enactment of the FQPA to ''develop a screening program . . . to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.'' This screening program must use ''appropriate validated test systems and scientifically relevant information.'' (21 U.S.C. 346a(p)(1)). Once the program is developed, EPA is required to take public comment and seek independent scientific review of it. Following the period for public comment and scientific review, and not later than 3 years following enactment of the FQPA, EPA is directed to ''implement the program.'' (21 U.S.C. 346a(p)(2)).

The scope of the estrogenic screening program was expanded by an amendment to the Safe Drinking Water Act (SDWA) passed contemporaneously with FQPA. That amendment gave EPA the authority to provide for the testing, under the FQPA estrogenic screening program, ''of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' (42 U.S.C. 300j–17).

*B. Setting and Reassessing Pesticide Tolerances Under the FFDCA*

1. *In general*. The process EPA follows in setting and reassessing tolerances under the FFDCA includes two steps. First, EPA determines an appropriate residue level value for the tolerance taking into account data on levels that can be expected in food. Second, EPA evaluates the safety of the tolerance relying on toxicity and exposure data and guided by the statutory definition of ''safety'' and requirements concerning risk assessment. Only on completion of the second step can a tolerance be established or reassessed. This bifurcation between selection of a tolerance level and evaluation of the safety of a tolerance has ramifications on how EPA responds when a tolerance is found to no longer meet section 408's safety standard. Generally, if an existing tolerance is shown to raise safety concerns, EPA would not address these concerns by modifying the tolerance through decreasing the tolerance level unless there were pesticide residue data showing how such a lower level could be achieved. Rather, where safety concerns are demonstrated and there is no available data demonstrating that a different application pattern would produce lower residue levels in food, the only appropriate action would be to revoke the tolerance. Below, EPA explains in detail, the reasons for this approach.

2. *Choosing a tolerance value*. In the first step of the tolerance setting or reassessment process (choosing a tolerance value), EPA evaluates data from experimental crop field trials in which the pesticide has been used in a manner, consistent with the draft FIFRA label, that is likely to produce the highest residue in the crop in question (e.g., maximum application rate, maximum number of applications, minimum pre-harvest interval between last pesticide application and harvest). (Refs. 2 and 3). These crop field trials are generally conducted in several fields at several geographical locations. (Ref. Id. at 5, 7 and Tables 1 and 5). Several samples are then gathered from each field and analyzed. (Id. at 53). Generally, the results from such field trials show that the residue levels for a given pesticide use will vary from as low as non-detectable to measurable values in the parts per million (ppm) range with the majority of the values falling at the lower part of the range. EPA then chooses a value to be used in the tolerance by identifying the highest residue value found and rounding that value up or adding a small increment to it. (See 70 FR 46706, 46731, August 10, 2005). (As discussed below, the safety of the tolerance value chosen is separately evaluated.).

There are three main reasons for closely linking tolerance values to the maximum value that could be present from maximum label usage of the pesticide. First, EPA believes it is important to coordinate its actions under the two statutory frameworks governing pesticides. (See The Pesticide Coordination Policy; Response to Petitions, (61 FR 2378, 2379; January 25, 1996)). It would be illogical for EPA to set a pesticide tolerance under the FFDCA without considering what action is being taken under FIFRA with regard to registration of that pesticide use. (Cf. 40 CFR 152.112(g) (requiring all necessary tolerances to be in place before a FIFRA registration may be granted)). In coordinating its actions, one basic tenet that EPA follows is that a grower who applies a pesticide consistent with the FIFRA label directions should not run the risk that his or her crops will be adulterated under the FFDCA because the residues from that legal application exceed the tolerance associated with that use. Crop field trials require application of the pesticide in the manner most likely to produce maximum residues to further this goal. Second, choosing tolerance values based on FIFRA label rates helps to ensure that tolerance levels are established no higher than necessary. If tolerance values were selected solely in consideration of health risks, in some circumstances, tolerance values might be set so as to allow much greater application rates than necessary for effective use of the pesticide. This could encourage misuse of the pesticide. Finally, closely linking tolerance values to FIFRA labels helps EPA to police compliance with label directions by growers because detection of an overtolerance residue is indicative of use of a pesticide at levels, or in a manner, not permitted on the label.

3. *The safety determination - risk assessment*. Once a tolerance value is chosen, EPA then evaluates the safety of the pesticide tolerance using the process of risk assessment. To assess risk of a pesticide, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide.

In evaluating toxicity or hazard, EPA examines both short-term (e.g., ''acute'') and longer-term (e.g., ''chronic'') adverse effects from pesticide exposure. (Ref. 2 at 8–10). EPA also considers whether the ''effect'' has a threshold - a level below which exposure has no appreciable chance of causing the adverse effect. For non-threshold effects, EPA assumes that any exposure to the substance increases the risk that the adverse effect may occur. At present, EPA only considers one adverse effect, the chronic effect of cancer, to potentially be a non-threshold effect. (Ref. 2 at 8–9). Not all carcinogens, however, pose a risk at any exposure level (i.e., ''a non-threshold effect or risk''). Advances in the understanding of carcinogenesis have increasingly led EPA to conclude that some pesticides that cause carcinogenic effects only cause such effects above a certain threshold of exposure. EPA has traditionally considered adverse effects on the endocrine system to be a threshold effect; that determination is being reexamined in conjunction with the endocrine disruptor screening program.

Once the hazard for a durational scenario is identified, EPA must determine the toxicological level of concern and then compare estimated human exposure to this level of concern. This comparison is done through either calculating a safe dose in humans (incorporating all appropriate safety factors) and expressing exposure as a percentage of this safe dose (the reference dose (''RfD'') approach) or dividing estimated human exposure into

an appropriate dose from the relevant studies at which no adverse effects from the pesticide are seen (the margin of exposure (''MOE'') approach). How EPA determines the level of concern and assesses risk under these two approaches is explained in more detail below. EPA's general approach to estimating exposure is also briefly discussed.

a. *Levels of concern and risk assessment*—(i) *threshold effects*. In assessing the risk from a pesticide's threshold effects, EPA evaluates an array of toxicological studies on the pesticide. In each of these studies, EPA attempts to identify the lowest observed adverse effect level (''LOAEL'') and the next lower dose at which there are no observed adverse affect levels (''NOAEL''). Generally, EPA will use the lowest NOAEL from the available studies as a starting point in estimating the level of concern for humans. In estimating and describing the level of concern, however, the chosen NOAEL is at times manipulated differently depending on whether the risk assessment addresses dietary or non-dietary exposures.

For dietary risks, EPA uses the chosen NOAEL to calculate a safe dose or RfD. The RfD is calculated by dividing the chosen NOAEL by all applicable safety or uncertainty factors. Typically, a combination of safety or uncertainty factors providing a hundredfold (100X) margin of safety is used: 10X to account for uncertainties inherent in the extrapolation from laboratory animal data to humans and 10X for variations in sensitivity among members of the human population as well as other unknowns. Further, under the FQPA, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor.

To quantitatively describe risk using the RfD approach, estimated exposure is expressed as a percentage of the RfD. Dietary exposures lower than 100 percent of the RfD are generally not of concern. Further complicating matters, EPA's Office of Pesticide Programs, in implementing FFDCA section 408, also calculates a variant of the RfD referred to as a Population Adjusted Dose (''PAD''). A PAD is the RfD divided by any portion of the FQPA safety factor that does not correspond to one of the traditional additional safety factors used in general Agency risk assessment. (Ref. 4 at 13–16). The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. For simplicity, this document refers to all safe dose calculations as RfDs. Today, RfDs are generally calculated for both acute and chronic dietary risks although traditionally a RfD was only calculated for chronic dietary risks.

For non-dietary, and often for combined dietary and non-dietary, risk assessments of threshold effects, the toxicological level of concern is not expressed as a safe dose or RfD but rather as the margin of exposure (MOE) that is necessary to be sure that exposure to a pesticide is safe. A safe MOE is generally considered to be a margin at least as high as the product of all applicable safety factors for a pesticide. For example, if a pesticide needs a 10X factor to account for interspecies differences, 10X factor for intraspecies differences, and 10X factor for FQPA, the safe or target MOE would be a MOE of at least 1,000. To calculate the MOE for a pesticide, human exposure to the pesticide is divided into the lowest NOAEL from the available studies. In contrast to the RfD approach, the higher the MOE, the safer the pesticide. Accordingly, if the level of concern for a pesticide is 1,000, MOE's exceeding 1,000 would generally not be of concern. Like RfDs, specific MOEs are calculated for exposures of different durations. For non-dietary exposures, EPA typically examines short-term, intermediate-term, and long-term exposures. Additionally, non-dietary exposure often involves exposures by various routes including dermal, inhalation, and oral.

The RfD and MOE approaches are fundamentally equivalent. For a given risk and given exposure of a pesticide, if the pesticide were found to be safe under a RfD analysis it would also pass under the MOE approach, and vice-versa.

(ii) *Non-threshold effects*. For risk assessments for non-threshold effects, EPA does not use the RfD or MOE approach. Rather, EPA calculates the slope of the dose-response curve for the non-threshold effects from relevant studies using a model that assumes that any amount of exposure will lead to some degree of risk. The slope of the dose-response curve can then be used to estimate the probability of occurrence of additional adverse effects as a result of exposure to the pesticide. For non-threshold cancer risks, EPA generally is concerned if the probability of increased cancer cases exceed the range of 1 in 1 million. Because the States' petition concerns the children's safety factor and the children's safety factor is only applicable to threshold risks, no further discussion of non-threshold risk assessment is included here.

b. *Estimating human exposure*. Equally important to the risk assessment process as determining the toxicological level of concern is estimating human exposure. Under FFDCA section 408, EPA is concerned not only with exposure to pesticide residues in food but also exposure resulting from pesticide contamination of drinking water supplies and from use of pesticides in the home or other non-occupational settings. (See 21 U.S.C. 346a(b)(2)(D)(vi)). The focus of the States' petition, however, appears to be on pesticide exposure from food. There are two critical variables in estimating exposure in food: (1) The types and amount of food that is consumed; and (2) the residue level in that food. Consumption is estimated by EPA based on scientific surveys of individuals' food consumption in the United States conducted by the U.S. Department of Agriculture. (Ref. 2 at 12). Information on residue values comes from a range of sources including crop field trials, data on pesticide reduction due to processing and other practices, information on the extent of usage of the pesticide, and monitoring of the food supply. (Id. at 17).

In assessing exposure from pesticide residues in food, EPA, for efficiency's sake, follows a tiered approach in which it, in the first instance, conducts its exposure assessment using the worst case assumptions that 100 percent of the crop in question is treated with the pesticide and 100 percent of the food from that crop contains pesticide residues at the tolerance level. (Id. at 11). When such an assessment shows no risks of concern, EPA's resources are conserved because a more complex risk assessment is avoided and regulated parties are spared the cost of any additional studies that may be needed. If, however, a first tier assessment suggests there could be a risk of concern, EPA then attempts to refine its exposure assumptions to yield a more realistic picture of residue values through use of data on the percent of the crop actually treated with the pesticide and data on the level of residues that may be present on the treated crop. These latter data are used to estimate what has been traditionally referred to by EPA as ''anticipated residues.''

Use of percent crop treated data and anticipated residue information is appropriate because EPA's worst case assumptions of 100 percent treatment and residues at tolerance value significantly overstate residue values. There are several reasons this is true.

First, all growers of a particular crop would rarely choose to apply the same pesticide to that crop; generally, the proportion of the crop treated with a particular pesticide is significantly below 100 percent. Second, as discussed above, the tolerance value is set above the highest value observed in crop field trials using maximum use rates. There may be some commodities from a treated crop that approach the tolerance value where the maximum label rates are followed, but most generally fall significantly below. If less than the maximum legal rate is applied, residues will be even lower. Third, residue values in the field do not take into account the lowering of residue values that frequently occurs as a result of degradation over time and through food processing and cooking.

EPA uses several techniques to refine residue value estimates. (Id. at 17–28). First, where appropriate, EPA will take into account all the residue values reported in the crop field trials, either through use of an average or individually. Second, EPA will consider data showing what portion of the crop is not treated with the pesticide. Third, data can be produced showing pesticide degradation and decline over time, and the effect of commercial and consumer food handling and processing practices. Finally, EPA can consult monitoring data gathered by the Food and Drug Administration, the U.S. Department of Agriculture, or pesticide registrants, on pesticide levels in food at points in the food distribution chain distant from the farm, including retail food establishments.

Another critical component of the exposure assessment is how data on consumption patterns are combined with data on pesticide residue levels in food. Traditionally, EPA has calculated exposure by simply multiplying high-end consumption by average residue values for estimating chronic risks and high-end consumption by maximum residue values for estimating acute risks. Although using average residues is a realistic approach for chronic risk assessment due to the fact that variations in residue levels and consumption amounts average out over time, using maximum residue values for acute risk assessment tends to greatly overstate exposure in narrow increments of time where it matters how much of each treated food a given consumer eats and what the residue levels are in the particular foods consumed. To take into account the variations in short-term consumption patterns and food residue values for acute risk assessments, EPA has more recently begun using probabilistic modeling techniques for estimating exposure when more simplistic models appear to show risks of concerns.

All of these refinements to the exposure assessment process, from use of food monitoring data through probabilistic modeling, can have dramatic effects on the level of exposure predicted, reducing worst case estimates by 1 or 2 orders of magnitude or more.

### *C. EPA Policy on the Children's Safety Factor*

As the above brief summary of EPA's risk assessment practice indicates, the use of safety factors plays a critical role in the process. This is true for traditional 10X safety factors to account for differences between animals and humans when relying on studies in animals (inter-species safety factor) and differences among humans (intra-species safety factor) as well as the additional 10X children's safety factor added by the FQPA.

In applying the children's safety factor provision, EPA has interpreted it as imposing a presumption in favor of applying an additional 10X safety factor. (Ref. 4 at 4, 11). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that this presumption or default in favor of the additional 10X is only a presumption. The presumption can be overcome if reliable data demonstrate that a different factor is safe for children. (Id.). In determining whether a different factor is safe for children, EPA focuses on the three factors mentioned in section 408(b)(2)(C) - the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children. (Id. at 24–25, 35). EPA's implementation of the safety factor provision is explained in greater detail in Unit VII.D.1.c.

### *D. Endocrine Disruptor Screening Program*

To aid in the design of the endocrine screening program called for in the FQPA and SDWA amendments, EPA created the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), which was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists. (63 FR 71542, 71544, Dec. 28, 1998). The EDSTAC presented a comprehensive report in August 1998 addressing both the scope and elements of the endocrine screening program. (Ref. 5). The EDSTAC's recommendations were largely adopted by EPA.

As recommended by EDSTAC, EPA expanded the scope of the program from focusing only on estrogenic effects to include androgenic and thyroid effects as well. (63 FR at 71545). Further, EPA, again on the EDSTAC's recommendation, chose to include both human and ecological effects in the program. (Id.). Finally, based on EDSTAC's recommendation, EPA established the universe of chemicals to be screened to include not just pesticides but some 87,000 chemical substances and common mixtures. (Id.). As to the program elements, EPA adopted EDSTAC's recommended two-tier approach with the first tier involving screening ''to identify substances that have the potential to interact with the endocrine system'' and the second tier involving testing ''to determine whether the substance causes adverse effects, identify the adverse effects caused by the substance, and establish a quantitative relationship between the dose and the adverse effect.'' (Id.). Tier 1 screening is limited to evaluating whether a substance is ''capable of interacting with'' the endocrine system, and is ''not sufficient to determine whether a chemical substance may have an effect in humans that is similar to an effect produced by naturally occurring hormones.'' (Id. at 71550). Based on the results of Tier 1 screening, EPA will decide whether Tier 2 testing is needed. Importantly, ''[t]he outcome of Tier 2 is designed to be conclusive in relation to the outcome of Tier 1 and any other prior information. Thus, a negative outcome in Tier 2 will supersede a positive outcome in Tier 1.'' (Id. at 71554–71555).

The EDSTAC provided detailed recommendations for Tier 1 screening and Tier 2 testing. The panel of the EDSTAC that devised these recommendations was comprised of distinguished scientists from academia, government, industry, and the environmental community. (Ref. 5, Appendix B). As suggested by the EDSTAC, EPA has proposed a battery of short-term *in vitro* and *in vivo* assays for the Tier 1 screening exercise. (63 FR at 71550–71551). Validation of these assays, however, has proved difficult and, more than 7 years after proposing the assays, validation of all of the assays in the battery is not yet complete. As to Tier 2 testing, EPA, on the recommendation of the EDSTAC, has

proposed using five longer-term reproduction studies that, with one exception, ''are routinely performed for pesticides with widespread outdoor exposures that are expected to affect reproduction.'' (Id. at 71555). EPA is examining, pursuant to the suggestion of the EDSTAC, modifications to these studies to enhance their ability to detect endocrine effects.

*E. Lawsuit Seeking the Revocation of Tolerances*

In 2003, the States of New York, New Jersey, Connecticut, and Massachusetts, filed suit against EPA seeking the revocation of the same pesticide tolerances challenged in this petition. The lawsuit, containing allegations nearly identical to those in this petition, argued that EPA's tolerance reassessment decisions as to alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb were in violation of FFDCA section 408. In 2004, this lawsuit was dismissed because the plaintiffs had not first presented their challenge to these tolerances to EPA in the form of section 408(d)(4) petition to revoke. (*New York v. EPA*, 350 F. Supp. 429 (S.D.N.Y. 2004)). The current petition was subsequently filed with EPA.

**IV. The Challenged Tolerances**

*A. Alachlor*

Alachlor is a selective herbicide used in agriculture for the control of broadleaf weeds and grasses. Alachlor is registered under FIFRA for use on corn, soybeans, sorghum, peanuts, and beans and 37 FFDCA tolerances are currently associated with those uses. (40 CFR 180.249).

In December 1998, EPA released a RED for alachlor finding it eligible for reregistration. (Ref. 6). The RED also reassessed alachlor's tolerances concluding that 22 met the requirements of section 408 but that 16 would have to be revised or revoked. (Id. at 184–187; Ref. 7). (The current number of tolerances for alachlor and the other five pesticides may not match the number of reassessed tolerances due to subsequent actions to establish or revoke tolerances as well as to a generic administrative action amending tolerance nomenclature. (68 FR 39428, July 1, 2003)). The RED found that alachlor posed chronic and cancer risks as a result of dietary exposure but not any acute risk. The RfD, or safe dose, for chronic exposure was based on a chronic dog study in which hemosiderosis and hemolytic anemia were observed. (Ref. 6 at 39). Cancer studies revealed that alachlor caused nasal, gastric, and thyroid tumors in the rat. A chronic dietary risk assessment found that exposure to alachlor from food and drinking water posed minimal risks. The subgroup facing the highest risk from food is non-nursing infants < 1 year at 0.5 percent of the RfD. (Id. at 85). For drinking water, the highest risk is posed to children 1–6 years at 2 percent of the RfD. (Id. at 87). The highest aggregate risk was 4 percent of the RfD for children 1–6 years. (Id. at 91). Cancer risks were found to be negligible. (Id. at 91–94). These risk assessments were based on moderately conservative exposure assumptions that relied on crop field trial data and information of the percentage of the crop treated with alachlor for some crops. (Id. at 83–84).

EPA removed the 10X children's safety factor based on its determination that (1) The toxicology database was complete; (2) the toxicology data showed no evidence of neurotoxicity and thus there was no need for a developmental neurotoxicity study for alachlor; (3) the toxicology data showed no evidence of increased susceptibility in the young; and (4) the exposure estimate was unlikely to understate exposure to infants and children. (Id. at 50). In the RED, EPA noted that alachlor is structurally similar to other chloroacetanilide pesticides (acetochlor, butachlor, propachlor, and metolachlor) and may share a common mechanism of toxicity with some or all of these pesticides. (Id. at 112). EPA indicated that no determination on this issue had been made at that time. (Id.). Subsequently, EPA did conclude that alachlor, acetochlor and butachlor share a common mechanism of toxicity with respect to the causation of nasal turbinate tumors. (Ref. 8). EPA has also now completed a cumulative cancer risk assessment for these pesticides that shows no risk of concern. (Ref. 9). Finally, the RED indicated that alachlor does have effects on the endocrine system in that it disrupts the hormone balance leading to the formation of thyroid tumors. (Ref. 6 at 31). Subsequently, EPA determined that these endocrine effects only occurred at high doses which were well above any exposure levels humans would face from pesticidal uses of alachlor. (Ref. 8).

*B. Chlorothalonil*

Chlorothalonil is a broad spectrum, non-systemic protectant pesticide mainly used as a fungicide to control fungal foliar diseases of vegetable, field, and ornamental crops. In connection with these uses there are 66 FFDCA tolerances currently established for chlorothalonil. (40 CFR 180.275).

In April 1999, EPA released a RED for chlorothalonil finding it eligible for reregistration so long as various uses were prohibited and numerous risk mitigation steps were taken. (Ref. 10 at v–vi). The RED also reassessed chlorothalonil's tolerances concluding that all met the requirements of section 408 except one that would have to be raised. Further, an additional tolerance was found to be necessary in connection with one use site. (Id. at 171–174; Ref. 7 at 58–59). The RED found that chlorothalonil posed acute, chronic and cancer risks as a result of dietary exposure. The RfD, or safe dose, for chronic exposure was based on a chronic rat study in which increased kidney weights and hyperplasia were observed. (Ref. 10 at 21). EPA evaluated acute risk based on the LOAEL from a subchronic rat study showing lesions and hyperplasia. (66 FR 56233, 56235, Nov. 7, 2001). Because no NOAEL was identified in this study EPA added an extra 3X safety factor. (Ref. 10 at 23). Cancer studies revealed that chlorothalonil caused renal adenomas and carcinomas in the rat and mouse. An aggregate chronic dietary risk assessment found that exposure to chlorothalonil from food and drinking water would utilize 68 percent of the RfD for children 1–6, the most highly-exposed subgroup. (Id. at 100). EPA concluded that there was a MOE of 310 for adults (the highest exposed subgroup) with regard to aggregate acute risk. (Id.). The target or safe MOE was 300. Cancer risks were found to be negligible. (Id. at 161–162). The acute and cancer risk assessments were based on relatively refined exposure assumptions including percent crop treated data on most crops and anticipated residue data based on field trial data or food monitoring data. The chronic risk assessment was more conservative in that it only relied upon percent crop treated information. (Id. at 36–41).

Other than retaining an additional 3X safety factor as to acute risks, EPA removed the 10X children's safety factor for chlorothalonil based on its determination that (1) the toxicology database was complete; (2) the toxicology data showed no evidence of increased susceptibility in the young; and (3) the exposure estimate was unlikely to understate exposure to infants and children. (Id. at 170; 66 FR at 56242). In the RED, EPA noted that chlorothalonil is a member of the polychlorinated fungicide class of pesticides which includes hexachlorobenzene, pentachlorophenol, and pentachloronitrobenzene. (Ref. 10 at

100). EPA indicated that no determination on the issue of common mechanism of toxicity had been made at that time. (Id.).

*C. Methomyl*

Methomyl is an insecticide registered on a wide variety of sites including field, vegetable, and orchard crops; turf (sod farms only); livestock quarters; commercial premises; and refuse containers. There are 78 FFDCA tolerances currently associated with these uses. (40 CFR 180.253).

In December 1998, EPA released a RED for methomyl finding it eligible for reregistration. (Ref. 11). The RED also reassessed methomyl's tolerances concluding that 65 met the requirements of section 408 but that 15 would have to be revised or revoked. (Id. at 103–111; Ref. 7 at 175–176). The RED found that methomyl posed chronic and acute risks as a result of dietary exposure. The RfD, or safe dose, for chronic exposure was based on a chronic dog study in which histopathological effects in the kidney were observed. (Ref. 11 at 24). EPA evaluated acute risk based on a rabbit developmental study that showed deaths in the dams on days 1–3 after dosing. (Id. at 25). Aggregate risks from methomyl were assessed taking into account that another pesticide, thiodicarb, degrades into methomyl and thus serves as another source of exposure to the compound. A chronic dietary risk assessment found that exposure to methomyl from food utilized no greater than 7 percent of the RfD for any subgroup. (Id. at 35). EPA concluded that there was a MOE of 417 for children 1–6 years (the highest exposed subgroup) with regard to acute risk from residues in food. (Id. at 37). Exposure to methomyl in drinking water was not expected to make either of these risk estimates exceed the level of concern. (Id. at 38). These risk assessments were based on moderately conservative exposure assumptions that relied on crop field trial data and information of the percentage of the crop treated with methomyl. (Id. at 35–36).

EPA reduced the 10X children's safety factor to 3X for methomyl. Although the data provided no indication of increased sensitivity of rats or rabbits to *in utero* or postnatal exposure to methomyl, there were data gaps for acute and subchronic neurotoxicity studies. (Id. at 24). In the RED, EPA indicated that no determination as to whether methomyl shared a common mechanism of toxicity with other substances had been made at that time. (Id. at 55–56). Subsequently, EPA did conclude that methomyl shares a common mechanism of toxicity with other *N*-methyl carbamate pesticides. (Ref. 8). EPA is re-examining the safety finding it made for methomyl in light of this conclusion. EPA has completed a preliminary cumulative risk assessment for the *N*-methyl carbamates. EPA expects to finish this cumulative risk assessment and make a safety determination as to all of the *N*-methyl carbamates in the near future.

*D. Metribuzin*

Metribuzin is a herbicide used on a wide range of sites, including vegetable and field crops, turf grasses (recreational areas), and non-crop areas, to selectively control certain broadleaf weeds and grassy weed species. In connection with these uses there are 61 FFDCA tolerances currently established for metribuzin (40 CFR 180.332).

In February 1999, EPA released a RED for metribuzin finding it eligible for reregistration based on various risk mitigation steps proposed by the registrant. (Ref. 12 at iv). The RED also reassessed metribuzin's tolerances concluding that 22 met the requirements of section 408 but that 38 would have to be revised or revoked. (Id. at 101–107; Ref. 7 at 187–188). The RED found that metribuzin posed acute and chronic risks as a result of dietary exposure. The RfD, or safe dose, for chronic exposure was based on a chronic rat study which showed increased thyroid weight, decreased lung weight, and increases of certain enzyme levels in blood. (Ref. 12 at 16). EPA evaluated acute risk based on the NOAEL from a developmental rabbit study showing decreased fetal body weight, increased number of runts, and increased incidence of extra and partial ribs. (Id. at 17). An aggregate chronic dietary risk assessment found that exposure to metribuzin from food and drinking water would utilize 79 percent of the RfD for children 1–6, the most highly-exposed subgroup. (Id. at 54). EPA concluded that there was a MOE of 1,200 for females 13–50 years (the highest exposed subgroup) with regard to aggregate acute risk. (Id. at 52). These risk assessments were based on the extremely conservative exposure assumptions that all commodities covered by the tolerances were treated with metribuzin and the residue levels were at the tolerance level. (Id. at 39–40).

EPA removed the 10X children's safety factor for metribuzin based on its determination that the toxicology database was complete and it showed no evidence of increased susceptibility in the young. (Id. at 51). In the RED, EPA indicated that no determination as to whether metribuzin shared a common mechanism of toxicity with other substances had been made at that time. (Id. at 55–56).

*E. Thiodicarb*

Thiodicarb is an insecticide used primarily on cotton, sweet corn, and soybeans. It is also registered for use on leafy vegetables, cole crops, ornamentals, and other minor use sites. In connection with these uses there are nine FFDCA tolerances currently established for thiodicarb. (40 CFR 180.407).

In December 1998, EPA released a RED for thiodicarb finding it eligible for reregistration. (Ref. 13). The RED also reassessed thiodicarb's tolerances concluding that 6 met the requirements of section 408 but that 34 would have to be revised or revoked. (Id. at at 89–91). The RED found that thiodicarb posed chronic, acute, and cancer risks as a result of dietary exposure. The RfD, or safe dose, for chronic exposure was based on a chronic rat study in which increased incidence of extramedullary hemopoiesis and decreased RBC cholinesterase were observed. (Ref. 13 at 20). EPA evaluated acute risk based on a rabbit developmental study that showed decreased body weight and increased developmental variations in the fetuses and a rat developmental study that found decreased body-weight gain in the dams. (Id. at 16, 21). Cancer studies showed that thiodicarb caused liver tumors in mice and testicular tumors in rats. Aggregate risks from thiodicarb were assessed taking into account that thiodicarb degrades into methomyl, another pesticide, and thus both pesticides serve as a source of exposure to the compound. A chronic dietary risk assessment found that exposure to thiodicarb from food utilized 104 percent of the RfD for the most highly-exposed subgroup, children 1–6 years. Although the exposure for this subgroup slightly exceeded the RfD, EPA concluded that this exposure estimate was significantly overstated because it assumed all treated crops had residues at the tolerance level. (Id. at 29). Cancer risks were found to be negligible. (Id. at 30). EPA concluded that there was a MOE of 1,680 for infants (the most highly-exposed subgroup) with regard to acute risk from residues in food. (Id. at 31). Exposure to thiodicarb in drinking water was not expected to make any of these risk estimates exceed the level of concern. (Id. at 33). The chronic risk assessment was based on very conservative exposure assumptions that relied on information of the percentage of the crop treated with thiodicarb and assumed residues were present at the tolerance level. (Id. at 29). The cancer

risk assessment and acute risk assessments used the less conservative approach of relying on percent crop treated data and anticipated residue data. (Id. at 30). Risk assessments for combined exposure to methomyl as a result of the use of thiodicarb and methomyl were identical to the risk assessments in the methomyl RED.

EPA reduced the 10X children's safety factor to 3X for thiodicarb. Although the data provided no indication of increased sensitivity of rats or rabbits to *in utero* or postnatal exposure to thiodicarb, there were data gaps for acute and subchronic neurotoxicity studies as to methomyl, a thiodicarb degradate. (Id. at 19). In the RED, EPA indicated that no determination as to whether thiodicarb shared a common mechanism of toxicity with other substances had been made at that time. (Id. at 55–56). Subsequently, EPA did conclude that thiodicarb shares a common mechanism of toxicity with other *N*-methyl carbamate pesticides. (Ref. 8). EPA is re-examining the safety finding it made for thiodicarb in light of this conclusion. EPA has completed a preliminary cumulative risk assessment for the *N*-methyl carbamates. EPA expects to finish this cumulative risk assessment and make a safety determination as to all of the *N*-methyl carbamates in the near future.

## V. The Petition to Modify or Revoke

The States' petition requests that EPA modify or revoke all of the tolerances for alachlor, chlorothalonil, methomyl, metribuzin, and thiodicarb. (Ref. 1 at 1). These tolerances must be modified or revoked, the States assert, because they do not meet the safety standard in section 408 of the FFDCA. (Ref. 1 at 2). The States argue that the tolerances are unsafe because EPA's latest safety conclusion for these tolerances did not include the full 10X children's safety factor and, if that full 10X safety factor is included, EPA cannot make the required reasonable certainty of no harm determination.

The States claim that ''as a matter of law'' the full 10X children's safety factor must be retained for each of these pesticides because of missing data concerning developmental neurotoxicity, endocrine effects, and/or cumulative effects of pesticides having a common mechanism of toxicity. It is ''legally impermissible,'' the States assert, if any of these data are absent for EPA to conclude that there are ''reliable data'' to choose an additional safety factor other than 10X. (Ref. 1 at 2, 5, 9, 11). As statutory support for this allegation, the States cite several provisions in section 408. First, as to developmental neurotoxicity, the States point to section 408(b)(2)(C)'s requirement that EPA assess the risk to children based on ''available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults . . . .'' The States note that EPA has announced that it plans to require developmental neurotoxicity (''DNT'') studies on all pesticides that are neurotoxic. (Ref. 1 at 10 citing 64 FR 42945, August 6, 1999). Second, as to endocrine effects, the States cite both the provision in section 408(b)(2)(D)(vii) requiring consideration of ''such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects'' and the requirement in section 408(p) for EPA to develop and implement an endocrine screening program. Finally, with regard to cumulative effects, the States reference the provision in section 408(b)(2)(D)(v) requiring consideration of ''available data on the cumulative effects of such residues and other substances that have a common mechanism of toxicity,'' and the requirement in section 408(b)(2)(C) mandating that EPA assess the risk to children based on similar considerations.

As to the individual pesticides, the States' allegations differ to some extent regarding developmental neurotoxicity data and cumulative effects data. The States claim that alachlor, methomyl, and thiodicarb are ''neurotoxin[s]'' and therefore, under EPA's own criterion, require a DNT study. (Ref. 1 at 14, 17, 19). No such claim is made as to chlorothalonil or metribuzin. As to cumulative effects, the States assert that for alachlor, methomyl, and thiodicarb, EPA has concluded that they share a common mechanism of toxicity with other substances, yet EPA has not assessed the risk posed by these pesticides' tolerances taking into account the cumulative effects from their respective common mechanism groups. (Ref. 1 at 13, 16–17, 19). For chlorothalonil, the States note that EPA has indicated that it may share a common mechanism with other pesticides in the same chemical class and argue that EPA has not determined whether in fact there is such a common mechanism. (Ref. 1 at 15). For metribuzin, the States allege that EPA has not evaluated whether it shares a common mechanism with other substances. (Ref. 1 at 18). As to endocrine effects, the States' claim is the same as to all five pesticides - endocrine effects data have not been submitted under the endocrine screening program for any of the pesticides.

Finally, the States present the following risk assessment figures for the five pesticides which the States claim would, if the full 10X safety factor was incorporated, exceed section 408's safety standard:

- Alachlor - exposure from residues in food equals 33 percent of the RfD for non-nursing infants, 17 percent for children 1–6, and 12 percent for children 7–12, (Ref. 1 at 14).
- Chlorothalonil - exposure from residues in food equals 60 percent of the RfD for non-nursing infants and children 1–6, and 32 percent of the RfD for the U.S. population, (Ref. 1 at 15–16).
- Methomyl - exposure from residues in food equals 67 percent of the RfD for non-nursing infants, 62 percent for children 1–6, and 34.6 percent for the U.S. population, (Ref. 1 at 17).
- Metribuzin - exposure from food equals 62 percent of the RfD for non-nursing infants, 75 percent for children 1–6 and 36 percent for the U.S. population, (Ref. 1 at 18–19).
- Thiodicarb - exposure from food equals 43 percent of the RfD for non-nursing infants, 104 percent of the RfD for children 1–6, and 68 percent for the U.S. population, (Ref. 1 at 20).

## VI. Public Comment

### *A. In General*

On March 9, 2005, EPA published a notice in the **Federal Register** announcing receipt of the States' petition to modify or revoke tolerances and requesting comments on the petition. (70 FR 11646, March 9, 2005). The notice included a short summary of the petition and referenced readers to EPA's electronic docket for a full copy of the petition. A period of 60 days was initially allowed for comment. EPA received two requests to extend the comment period. Because EPA could not publish notice of an extension prior to expiration of the 60 days, EPA reopened the comment period for 30 days on May 16, 2005. The comment period closed on June 15, 2005. (See 70 FR 25826, May 16, 2005). EPA received 13 comments on the petition. These comments are summarized below. EPA has not repeated comments in instances where they were made by more than one commenter.

### *B. Individual Comments*

1. *CropLife America*. CropLife America (''CLA'') is a trade association

representing members of the pesticide industry. CLA provided extensive comments on the petition. (Ref. 14). CLA notes that, although the petition only concerned five pesticides, if the arguments in the petition are accepted it would have a ''far broader impact'' because the result would be that EPA would ''almost always [have] to apply the tenfold safety factor'' in pesticide tolerance decisions. (Id. at 3). CLA contends that routinely applying the 10X safety factor across the board would cause ''serious market disruption'' and not allow EPA to distinguish between ''conventional'' and reduced-risk pesticides.

According to CLA, the petitioners' assertion that the FQPA mandates an ''automatic'' retention of the 10X children's safety factor whenever there is a ''data gap'' is not supported by the statute or legislative history. (Id. at 5, 11). CLA points out that the statute does not use the term ''data gap'' but instead requires an additional safety factor to ''take into account the completeness of the data . . . .'' (Id. at 13). Moreover, CLA argues the statute gives EPA ''broad discretion'' to choose a different factor. Additionally, CLA claims that the statute bars application of the 10X factor to a pesticide due to the absence of data unless the registrant has first been given an opportunity to conduct and submit the study. (Id. at 17). Nonetheless, CLA admits that the additional 10X factor ''should be imposed . . . if the already available data give substantive reason for concern . . . .'' (Id. at 19).

As to data on endocrine effects, CLA notes that section 408(b)(2)(C) - the provision addressing the protection of infants and children - does not even address this issue. (Id. at 11). Further, even the general provisions of section 408 only require EPA to consider ''such information as the Administrator may require'' on endocrine effects. CLA concludes that ''[s]ince no data requirements pertaining to endocrine effects have been imposed, a data base cannot be said to be 'incomplete' because such endocrine data have not been generated.'' (Id. at 12). On cumulative effects, CLA asserts that the statute provides no data requirements; rather, EPA is directed to review ''available data'' on the issue. Thus, CLA argues that the database cannot be incomplete as to cumulative effects. (Id.)

The legislative history, CLA claims, supports its reading of the statute as granting EPA broad discretion in determining whether to apply the children's safety factor. CLA references portions of the National Research Council's report titled ''Pesticides in the Diets of Infants and Children'' and the legislative debate and reports which refer to the need for EPA ''consider'' an additional factor, and EPA's ''discretion'' and ''flexibility'' in choosing the appropriate factor to protect children. (Id. at 5–8).

CLA notes several examples of situations relevant to the current petition which demonstrate the wisdom of giving EPA discretion in applying the children's safety factor. CLA asserts that where there is no evidence that a pesticide causes neurotoxicity or developmental effects, the absence of a DNT study is unlikely to raise any concern regarding such effects. Additionally, where a cumulative assessment has not been performed, CLA argues there could be a number of circumstances where an additional 10X factor would be unnecessary because various exposure considerations would make any meaningful cumulation of effects unlikely. (Id. at 13–14).

Finally, CLA asserts that the databases for the five pesticides challenged in the petition are ''data-rich'' and support EPA's decision on the children's safety factor for these pesticides. Specifically as to alachlor, CLA challenges the States' claim that alachlor is a neurotoxin arguing this assertion is ''utterly baseless.'' (Id. at 22).

2. *Pesticide Policy Coalition*. The Pesticide Policy Coalition (''PPC'') is a group sponsored by organizations representing pesticide manufacturers, pesticide applicators, commodity groups, and food processors. (Ref. 15). The PPC's comments contain many of the same arguments presented by the CLA. Additional information is included, however, regarding the endocrine screening program and DNT studies.

The PPC asserts that the States are wrong in their claim that tolerance reassessments ''must include an assessment of [a pesticide's] endocrine effects in accordance with the prescribed endocrine effects (EE) screening program called for by FFDCA 408(p).'' (Id. at 8). This claim is inconsistent with sections 408(p) and 408(q), according to the PPC, because section 408(p) specifies ''an August 1999 date for starting the EE testing and [subsection 408(r) requires] . . . that a third of all tolerance reassessments be completed on the exact same date - three years after the date of enactment of the FQPA.'' (Id. at 8–9) (emphasis in original). The PPC notes that the tolerance reassessments which appear to have been the genesis of the States' petition ''were issued prior to that EE implementation date.'' (Id. at 9). Additionally, the PPC asserts that, even in the absence of endocrine screening tests, EPA has information bearing on endocrine effects from its existing toxicity database. (Id. at 8).

On DNT studies, the PPC argues that the States incorrectly assert that a DNT study is needed for all neurotoxic pesticides. EPA, according to the PPC, has now determined that in some circumstances other tests more appropriately address issues regarding developmental neuorotoxicity. (Id. at 10–11). Further, the PPC claims that DNT studies ''almost never affect the regulatory 'bottom line,''' and this information should be taken into account in determining the need for the children's safety factor. (Id. at 11).

3. *Monsanto Company*. Monsanto Company is the basic manufacturer and primary registrant for alachlor and its comments focused on that pesticide. (Ref. 16). Monsanto argues that EPA was justified in removing the children's safety factor for alachlor at the time of the alachlor RED given that the database was complete and there was no evidence of increased susceptibility in the young. (Id. at 3). Monsanto contends there is no data gap for a DNT study because EPA has not requested such a study for alachlor. No basis for requesting such a study is present, according to Monsanto, because it ''is unaware of any data indicating the alachlor is neurotoxic, even at lethal dose levels.'' (Id. at 4). Monsanto also disputes the States' assertion that alachlor is an endocrine disruptor. Although noting that alachlor has been found to cause thyroid tumors, Monsanto notes that ''significant increases in thyroid tumors occurred only at an excessive dose level that exceeded the Maximum Tolerance Dose, and occurred via a well-known mode of action that is generally not considered to be of concern at anticipated human exposure levels.'' (Id.). Monsanto submitted a report that discussed in more detail alachlor's potential for endocrine disruption. (Ref. 17). As to cumulative effects, Monsanto states that now that a decision on common mechanism concerning the chloroacetanilides has been made, it has conducted a cumulative assessment and the results show there is no cause for concern. (Ref. 18 at 4). Finally, Monsanto argues that the States misstated the risks presented by alachlor. The figures cited by the States, Monsanto notes, were from a worst-case assessment by EPA. A more refined assessment by EPA produced significantly lower risk numbers, according to Monsanto. In fact, Monsanto contends given these refined risk numbers the alachlor tolerances would still meet the safety standard

even if the children's safety factor is retained. (Id. at 5).

4. *GB Biosciences Corporation*. GB Biosciences is the basic manufacturer and primary registrant of chlorothalonil. It filed initial comments during the public comment period and submitted more detailed comments at a later date. (Ref. 18 and 19). GB Biosciences contends that a complete database on chlorothalonil was available to EPA at the time of the chlorothalonil RED and a 2001 chlorothalonil tolerance action. GB Biosciences states that this database indicates that further study of chlorothalonil through a DNT study is ''not justified.'' (Ref. 18 at 3). According to GB Biosciences, ''chlorothalonil has been shown in the numerous studies submitted by several registrants, including a subchronic neurotoxicity study, not to have any neurotoxic potential, even at doses that are clearly lethal in either short or long-term administration.'' (Ref. 19 at 5).

Further, GB Biosciences asserts that ''[t]he extensive database of mammalian and ecological toxicity studies that exists for chlorothalonil provides no evidence of potential to cause endocrine disruption.'' (Ref. 18 at 4). GB Biosciences notes that the type of studies needed for higher level (Tier II) endocrine screening are available for chlorothalonil. These studies include ''teratology studies performed in both rats and rabbits, and two well-conducted 2-generation reproduction studies with endocrine endpoints evaluated.'' (Ref. 19 at 6). According to GB Biosciences, ''[if] this chemical were an endocrine disruptor, it would have been obvious from the results of these studies, as well as evident in the numerous subchronic and chronic/carcinogenicity studies performed.'' (Id.). In these studies, ''any changes or perturbations in the hormone balance or maintenance of homeostasis would have been recognized, with endpoints such as tumors of the mammary gland, testicular or ovarian tumors or hyperplasia, decreased fertility or other reproductive indices in 2-generation reproduction studies at doses that are not toxic to the dams.'' (Id.). GB Biosciences asserts that the rat forestomach and kidney tumors seen in the chlorothalonil animal data ''are not indicative of any toxicity related to endocrine disruption.'' (Id.).

Finally, GB Biosciences argues that an examination of chlorothalonil and other similar pesticides in its class (polychlorinated pesticides) reveals that chlorothalonil does not share a common mechanism with these pesticides. GB Biosciences claims that of the polychlorinated pesticides only chlorothalonil and HCB result in kidney tumors. A close examination of these kidney tumors, according to GB Biosciences, shows that chlorothalonil and HCB work through different mechanisms. GB Biosciences argues that any potential common mechanism between chlorothalonil and HCB is irrelevant in any event since HCB has not been used as a pesticide for many years and only exists as a minor contaminant now in certain products. (Ref. 18 at 5).

5. *Bayer CropScience*. Bayer CropScience is the registrant for metribuzin and thiodicarb and its comments address both of these pesticides. (Ref. 20).

a. *Metribuzin*. Bayer contends that EPA's decision in the metribuzin RED that metribuzin did not cause cumulative effects with other substances was supported by reliable data because metribuzin is the only asymmetrical triazinone pesticide registered in the United States. (Id. at 5). Further, Bayer argues that ''the metribuzin database provides very robust data on potential endocrine effects from numerous studies'' addressing many parameters relevant to endocrine effects. (Id.). Finally, Bayer notes that EPA's risk assessment for metribuzin in the metribuzin RED was a worst-case assessment and asserts that a more refined assessment ''would result in an exposure well below EPA's level of concern even if an additional tenfold factor were applied.'' (Id.).

b. *Thiodicarb*. Bayer notes that a 3X FQPA safety factor was retained for thiodicarb in the thiodicarb RED due to outstanding studies on acute and sub-chronic neurotoxicity. (Id. at 6). These studies were submitted to EPA in 2000, according to Bayer, and ''show no unexpected or unreasonable neurotoxic effects.'' Thus, it is Bayer's view ''that the EPA extra 3X FQPA safety factor can now be removed from the risk assessment.'' (Id. at 7). Further, Bayer contends that based on the thiodicarb database ''there is no evidence that thiodicarb causes endocrine disruption.'' (Id. at 8). Bayer asserts that EPA is currently conducting a cumulative risk assessment for thiodicarb and other *N*-methyl carbamate pesticides but that this assessment ''has no bearing on the current petition.'' (Id. at 9). Finally, Bayer claims that, if a more refined risk assessment was performed for thiodicarb, it would demonstrate risks to be so low (in the range of 0.1 percent of the RfD) that applying an additional 10X factor would not matter in the safety determination. Bayer also claims that the States misunderstand the function of how risk assessment and the FQPA safety factor are used in evaluating the residue levels chosen as tolerance values. For example, Bayer states that the States are incorrect when they assert that the unacceptably high risks of these pesticides would require ''a reduction in the residue tolerance'' and that the tolerances ''must be recalculated applying the full tenfold safety factor.'' (Id. at 10). Risk determinations or safety factors are not used directly in selecting the values used in tolerances.

6. *DuPont Crop Protection*. Dupont Crop Protection is the basic manufacturer and primary registrant of methomyl. (Ref. 21). DuPont asserts that it has addressed the data gap for methomyl on neurotoxicity by submitting acute and subchronic neurotoxicity studies. (Id. at 2). Additionally, DuPont claims that the extensive database for methomyl contains ''no scientific evidence to suggest that methomyl induces a direct and adverse effect on endocrine function.'' (Id. at 3). In particular, DuPont argues that a review of the relevant studies shows that ''[i]n none of these studies was there a treatment-related effect on either organ weights or histopathology in tissues that would be indicative of endocrine system dysfunction.'' (Id.).

7. *NRDC*. NRDC submitted comments on behalf of various environmental organizations and individuals. (Ref. 22). Relative to the States' petition, NRDC asserted that the DNT study is more sensitive than other required studies and thus ''DNT testing is essential for assessing pesticide effects, not only as a measure of toxicity to the developing brain and nervous system, but also as a measure of developmental and reproductive effects generally.'' (Id. at 2). NRDC submitted various other comments concerning the children's safety factor that involved issues not raised in the States' petition (e.g., exposure of farm children to pesticides).

8. *Other comments*. The other comments received either repeated the arguments made by one of the commenters above, touted the benefits of one or more of the pesticides, or stated agreement with the petition without providing any supporting basis.

## VII. Ruling on Petition

### *A. Introduction*

This Order denies the States' petition to modify or revoke the tolerances as to the pesticides alachlor, chlorothalonil, and metribuzin. For the alachlor and metribuzin tolerances this denial is based on EPA's finding that, even if the additional 10X children's safety factor

was retained as to these tolerances, they would still meet the section 408(b) safety standard. The request for revocation or modification of the chlorothalonil tolerances is denied because EPA determined that, as to that pesticide, the grounds asserted for retaining the children's safety factor (lack of data on developmental neurotoxicity, endocrine effects, and cumulative effects) are without basis. This Order does not address methomyl and thiodicarb because EPA is currently re-evaluating the risk of these pesticides as part of the overall reassessment of the tolerances for carbamates.

This Unit of the Order is organized as follows: Unit VII.B. discusses EPA's reasons for not ruling on the petition's requests as to methomyl and thiodicarb; Unit VII.C. explains EPA's basis for denying the petition as to alachlor and metribuzin; and Unit VII.D. addresses EPA's conclusions regarding the alleged absence of data on developmental neurotoxicity, endocrine effects, and cumulative effects for chlorothalonil.

Before proceeding to the merits of the petition, several preliminary matters need to be addressed. First, the States initially raised their concerns regarding these pesticides in a 2003 lawsuit challenging the reassessment decisions for the pesticides. That lawsuit was dismissed because the States had not first presented their contentions to EPA in the form of a petition to revoke tolerances. (*New York v. EPA*, 350 F. Supp. 429 (S.D.N.Y. 2004)). The States have now presented such a petition to EPA but they continue to protest that EPA's regulation governing petitions to revoke is ''designed to be used by manufacturers seeking changes to tolerances on technical grounds'' and that they, as non-manufacturers ''cannot realistically make the factual assertions'' required under EPA's regulation. (Ref. 1 at 3, 5). EPA would clarify that the regulation in question, 40 CFR 180.32, does mandate that certain technical factors mostly relevant to pesticide manufacturers are ''reasonable grounds'' to seek modification or revocation of tolerances but the regulation does not, in any way, imply that these technical factors are the only reasonable grounds for seeking modification or revocation of a tolerance. Certainly, a petition, such as this one, asserting that a tolerance does not meet the safety standard would be an appropriate petition under section 408(d) and 40 CFR 180.32.

Second, the States' lawsuit was styled solely as a challenge to the tolerance reassessment decisions. The petition focuses heavily on the reassessment decision in arguing for modification or revocation but also cites matters arising after the reassessment decisions. EPA believes that this is appropriate. A section 408(d) petition to revoke or modify is the proper way to challenge a tolerance reassessment decision, and if such a petition follows immediately on the heels of a tolerance reassessment decision, the reassessment decision will likely be the sole focus in EPA's review of the petition. When several years have passed between the release of the tolerance reassessment decision and the filing of a petition to revoke or modify, however, the reassessment decision may be superseded in whole or in part by new information. In such circumstances, EPA believes it is appropriate to evaluate the petition in light of EPA's current knowledge regarding the risks of a pesticide.

Finally, it should be noted that EPA is treating this petition as a petition to revoke tolerances not to modify tolerances. The States argue that the children's safety factor should be retained for the objected-to tolerances and that, if the factor is retained, the safety finding cannot be made. Such a claim, if it could be substantiated, would be grounds for revocation of the tolerances. At times, the petition mentions reducing tolerance levels or recalculating tolerance levels to take into account the children's safety factor. As explained in Unit III.B.2., however, EPA determines appropriate tolerance levels (as opposed to the safety of tolerances) based on data bearing on the maximum pesticide residues that will appear on crops following use according to the FIFRA label. The petition presents no such data supporting a different tolerance level and therefore is treated solely as a petition to revoke.

### *B. Methomyl and Thiodicarb*

Methomyl and thiodicarb are both *N*-methyl carbamates. This group of pesticides has been found to share a common mechanism of toxicity and EPA is now working on completing an assessment of the cumulative effects from the *N*-methyl carbamates, including methomyl and thiodicarb. A preliminary cumulative risk assessment has been prepared and released for public comment. The final cumulative risk assessment is expected in the near future.

EPA did complete reregistration and tolerance reassessment for methomyl and thiodicarb in 1998, shortly after the passage of FQPA. Subsequent to release of the REDs for these pesticides, EPA made the common mechanism determination for the *N*-methyl carbamates. Because methomyl and thiodicarb are *N*-methyl carbamates and are thus part of the cumulative risk assessment, EPA is revisiting the safety of the tolerances for these pesticides as part of the overall tolerance reassessment decision on *N*-methyl carbamates. Once EPA completes the *N*-methyl carbamate cumulative risk assessment, it will make a determination on whether all *N*-methyl carbamate pesticide tolerances meet the FFDCA section 408 standard. This determination will necessarily include the methomyl and thiodicarb tolerances. It would be disruptive of the overall *N*-methyl carbamate reassessment effort to separately respond to the States' petition regarding two of the *N*-methyl carbamates. Such a disruption would make it more difficult for EPA to comply with its statutory deadline for completing the tolerance reassessment process. Accordingly, EPA will not address the States' petition to revoke the methomyl and thiodicarb tolerances until the cumulative risk assessment for the *N*-methyl carbamates is completed and overall tolerance reassessment determinations are made.

### *C. Alachlor and Metribuzin*

The States' petition is based on the premise that, EPA should retain the additional 10X safety factor for the five pesticides in question, the additional factor renders the tolerances for these pesticides unsafe. For two of the pesticides - alachlor and metribuzin - however, the States' logic collapses at its inception because retention of the 10X factor would not affect EPA's safety finding with regard to these pesticides and the States' petition as to those two pesticides is denied for that reason.

As to alachlor, the States maintain that EPA has assessed the risk in the alachlor RED as equaling 33 percent of the RfD for non-nursing infants, 17 percent for children 1–6, and 12 percent for children 7–12. The States correctly note that if an additional 10X safety factor was used in such assessments, the assessments would then indicate that exposure exceeded the RfD. Retaining an additional 10X factor would reduce the RfD by a factor of 10 and, correspondingly, estimated exposure as a percentage of the RfD would increase tenfold.

The States failed to take into account, however, that the RED also contained a revised risk assessment for alachlor that showed the highest aggregate risk estimate to be that exposure of children aged 1–6 is 4 percent of the RfD. (Ref. 6 at 91). Even incorporating an additional 10X safety factor into such a risk estimate would increase the risk estimate to no greater than 40 percent of the RfD, or still well within the safe level. Since completion of the RED, EPA

has conducted an assessment of the cumulative affects of alachlor and the other pesticides with which it shares a common mechanism of action. That assessment showed the cumulative risk to have a MOE of 7,700 for the most-exposed subgroup. (Ref. 9). Even applying an additional 10X factor in evaluating this risk would not raise concerns because the level of concern would be for a MOE falling below 1,000.

As to metribuzin, the States cite EPA's conclusion in the metribuzin RED that it poses a risk equaling 62 percent of the RfD for non-nursing infants, 75 percent for children 1–6 and 36 percent for the U.S. population. Again, the States correctly note that if an additional 10X safety factor was used in such assessments, the assessments would show that exposure exceeded the RfD. This risk assessment, however, was based on the worst case exposure assumptions that all crops on which metribuzin is registered are treated and that all commodities from those crops have metribuzin residues at the tolerance level. EPA is aware that such assumptions grossly overstate risk but EPA does not spend resources to conduct more realistic assessments if a risk assessment using these conservative assumptions shows no concerns. Because the States are now claiming that the additional 10X safety factor should be retained, EPA has conducted a revised risk assessment for metribuzin assuming that an additional 10X safety factor is needed.

This revised risk assessment uses relatively minor refinements to the worst case exposure assumptions used in the RED. (Ref. 23). For the acute risk assessment, EPA used tolerance level residues for most commodities, monitoring data for some commodities, and an anticipated residue value for milk. In addition to these refinements, the chronic risk assessment relied upon percent crop treated data for most commodities. Overall, the refinements were fairly conservative, and thus the assessment still overstates exposure. For example, monitoring data were used to estimate residue values in potatoes and potato products. U.S. Department of Agriculture monitoring data revealed 1,472 samplings of potatoes for metribuzin. Of those 1,472 samples, only one showed a detectable residue of metribuzin. Nonetheless, in its risk assessment, EPA assumed that all potatoes contained metribuzin at the level found in that one sample (0.05 parts per million). EPA also used monitoring data for beef and poultry products. Monitoring of these commodities revealed no detection of metribuzin in 3,299 samples. Yet, EPA assumed that all of these commodities had metribuzin present at the level of detection of the analytical method. The revised risk assessment - which contained an additional 10X safety factor - found the highest acute and chronic risks for any population subgroup to be 75 percent and 69 percent, respectively, of the RfD. Thus, even if an additional 10X safety factor is required for metribuzin, metribuzin still meets the safety standard in section 408.

Because the States are incorrect in their assertion that retaining the additional 10X factor for alachlor and metribuzin would demonstrate that their tolerances are unsafe, the States' petition is denied as to alachlor and metribuzin. It appears at this time that retention of the additional 10X factor may make a significant difference in the characterization of the safety of the chlorothalonil tolerances. For that reason, EPA addresses below the grounds asserted in the petition for retaining the additional 10X factor for the chlorothalonil tolerances.

*D. Chlorothalonil*

The States' petition seeks the revocation of tolerances for the named pesticides for EPA's alleged unlawful removal of the children's safety factor for these pesticides despite an alleged absence of DNT studies and data bearing on endocrine effects and cumulative effects from substances sharing a common mechanism of toxicity. Below each of these claims are examined in detail with regard to chlorothalonil. First, however, EPA explains its interpretation of the discretion granted it under the children's safety factor provision and the manner in which it has implemented the children's safety factor provision focusing on its current policy guidance document on the children's safety factor.

1. *The children's safety factor*—a. *The statutory provision*. The statutory requirements pertaining to the additional children's safety factor are contained in two sentences in section 408(b)(2)(C). The first sentence commands that as to ''threshold effects, for the purposes of [making the reasonable certainty of no harm finding], an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children.'' (21 U.S.C. 346a(b)(2)(C)). This sentence also explains that the purpose for this additional safety factor is ''to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' (Id.). Switching course, the second sentence then countermands the mandatory language in the first sentence (''shall be applied'') and makes clear that, EPA has the authority to deviate from the requirement to apply an additional 10X safety factor. The second sentence reads ''[n]othwithstanding such requirement for an additional margin of safety, the Administrator may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such a margin will be safe for children.'' Importantly, other than requiring that EPA act only on the basis of reliable data, Congress did not impose an elevated standard upon EPA as a requirement for choosing a factor different than an additional factor of 10X. The substantive standard that Congress did include was that any factor different than the 10X factor be ''safe'' for infants and children. (Id.). This standard is equivalent to the overall substantive standard for approving tolerances. (21 U.S.C. 346a(b)(2)(A)). Essentially, the two sentences addressing the additional safety factor direct EPA, in determining whether a tolerance poses a reasonable certainty of no harm to children, to apply an additional 10X factor unless EPA concludes, based on reliable data, that a different factor provides a reasonable certainty of no harm to children. Viewed in this light, the children's safety factor provision gives EPA broad discretion in choosing the level of any additional safety factor, subject to the constraint that EPA must rely only on reliable data and the guidance that EPA should focus on the completeness of the database and potential pre- and post-natal toxicity.

b. *Legislative history*. The legislative history of this provision also recognizes that EPA should be accorded discretion concerning the size of any additional factor to protect children based on the circumstances surrounding each pesticide. In the House Commerce Committee Report, the committee urged EPA to construe the children's safety provision ''in futherance of the following recommendations of the National Research Council's Study, 'Pesticides in the Diets of Infants and Children.''' The committee then quoted two paragraphs from the Study including the conclusion that: ''Because there exist specific periods of vulnerability during postnatal development, the committee recommends that an uncertainty factor up to the tenfold factor traditionally used by EPA and [the Food and Drug Administration] for fetal developmental toxicity *should also be considered* when

there is evidence of postnatal developmental toxicity and when data from toxicity testing relative to children are incomplete.'' (H.Rep. 104–669, Part 2 at 43 (1996)) (emphasis added). This emphasis on the exercise of judgment by EPA was highlighted in a pre-enactment EPA letters to key legislators regarding how EPA interpreted the children's safety provision. In that letter EPA stated that it ''believe[d] that [the children's safety factor] provision is consistent with the recommendations in [the NRC Study] and would allow the Agency to ensure that pesticide tolerances are safe for children *in those situations* where an additional margin of safety is *necessary* to account for inadequate or otherwise incomplete data.'' (142 Cong. Rec. S8737 (July 24, 1996) (letter to Rep. Bliley included in the record by Sen. Lugar) (emphasis added)). EPA explicitly concluded that the children's safety factor provision ''provides the Agency with discretion, based on sound science, to set the margin of safety at an appropriate level to protect infants and children.'' (Id. at S8737–S8738).

c. *EPA policy and implementation of safety factor provision.* On January 31, 2002, EPA released its current science policy guidance on the children's safety factor. (Ref. 4) [This policy is hereinafter referred to as the ''Children's Safety Factor Policy'']. That policy had undergone an intensive and extended process of public comment as well as internal and external science peer review. An EPA-wide task force was established to consider the children's safety factor in March 1998. Taking into account reports issued by the task force on both toxicity and exposure issues, EPA's Office of Pesticide Programs (''OPP'') released a draft children's safety policy document in May 1999. That document was subject to an extended public comment period as well as review by the FIFRA Scientific Advisory Panel. (Id. at 5). Although EPA's overall weight-of-the-evidence approach for evaluating safety factor determinations has remained fairly consistent over the years, EPA's implementation of the approach, and the weight given certain considerations, has evolved as the Agency has gained experience in applying the safety factor provision in various circumstances. The January 31, 2002 policy reflects a continued evolution in EPA's implementation of the safety factor provision.

The Children's Safety Factor Policy emphasizes throughout that EPA interprets the children's safety factor provision as establishing a presumption in favor of application of 10X safety factor for the protection of infants and children in addition to the traditional inter- and intra-species safety factors. (Id. at 4, 11, 50, A–5). Further, EPA notes that the children's safety factor provision permits a different safety factor to be substituted for this default 10X factor only if reliable data are available to show that the different factor will protect the safety of infants and children. (Id.). Given the wealth of data available on pesticides, however, EPA indicates a preference for making an individualized determination of a protective safety factor if possible. (Id. at 12). EPA states that use of the default factor could under- or over-protect infants and children due to the wide variety of issues addressed by the children's safety factor. (Id.). EPA notes that ''[i]ndividual assessments may result in the use of additional factors greater or less than, or equal to 10X, or no additional factor at all.'' (Id.).

In making such individual assessments regarding the magnitude of the safety factor, EPA stresses the importance of focusing on the statutory language that ties the children's safety factor to concerns regarding potential pre- and post-natal toxicity and the completeness of the toxicity and exposure databases. (Id. at 12–13). As to the completeness of the toxicity database, EPA recommends use of a weight-of-the-evidence approach which considers not only the presence or absence of data generally required under EPA regulations and guidelines but also the availability of ''any other data needed to evaluate potential risks to children.'' (Id. at 23). Under this weight-of-the-evidence approach, the fact that data are missing is not outcome determinative with regard to retention of the children's safety factor. Rather, when data are absent, EPA indicates that the principal inquiry of the weight-of-the-evidence evaluation would center on whether the missing data would significantly affect calculation of a safe exposure level (commonly referred to as the Reference Dose (''RfD'')). (Id. at 24–25; accord 67 FR 60950, 60955, September 27, 2002) (finding no additional safety factor necessary for triticonazole despite lack of DNT study because the ''DNT [study] is unlikely to affect the manner in which triticonazole is regulated.'')). When the missing data are data above and beyond general regulatory requirements, EPA indicates that the weight of evidence would generally only support the need for an additional safety factor where the data ''is being required for 'cause,' that is, if a significant concern is raised based upon a review of existing information, not simply because a data requirement has been levied to expand OPP's general knowledge.'' (Ref. 4 at 26). The extent to which the policy stresses the need for EPA's evaluation of the completeness of the database to focus directly on whether missing data might possibly lower an existing RfD was a change in emphasis from past actions.

In evaluating the completeness of the exposure database, EPA explains that a weight-of-the-evidence approach should be used to determine the confidence level EPA has as to whether the exposure assessment ''is either highly accurate or based upon sufficiently conservative input that it does not underestimate those exposures that are critical for assessing the risks to infants and children.'' (Id. at 36). EPA describes why its methods for calculating exposure through various routes and aggregating exposure over those routes generally produce conservative exposure estimates - i.e., health-protective estimates due to overestimation of exposure. (Id. at 43–47). Nonetheless, EPA emphasizes the importance of verifying that the tendency for its methods to overestimate exposure in fact were adequately protective in each individual assessment. (Id. at 48–49).

As to potential pre- and post-natal toxicity, the Children's Safety Factor Policy lists a variety of factors that should be considered in evaluating the degree of concern regarding any identified pre- or post-natal toxicity. (Id. at 31). As with the completeness of the toxicity database, EPA emphasizes that the analysis should focus on whether any identified pre- or post-natal toxicity raises uncertainty as to whether the chosen RfD is protective of infants and children. (Id. at 35). Once again, the presence of pre- or post-natal toxicity, by itself, is not regarded as determinative as to size of the children's safety factor. Rather, EPA stresses the importance of evaluating all of the data under a weight of evidence approach focusing on the safety of infants and children. (Id.). This attention on the overall database also indicated a shift in emphasis for EPA's implementation of the children's safety factor provision as previous decisions had often treated a finding of increased sensitivity in the young as almost necessitating some additional safety factor.

EPA's experience in making decisions under the 2002 policy is that while for many pesticides the safety factor determination has not changed, for others the safety factors may go up or down. To generalize, in situations where the database is incomplete, EPA's heightened emphasis on whether the

missing data may affect the assessment of risk has tended to make it more likely that EPA will retain the full 10X children's safety factor. (See, e.g., 70 FR 7876, 7882, February 16, 2005) (avermectin - 10X factor retained due to lack of DNT study and acute and subchronic neuorotoxicity studies and residual toxicological concerns as to safety of young; 70 FR 7886, 7891, February 16, 2005) (clothianidim - 10X factor retained due to lack of developmental immunotoxicity study; 69 FR 58058, 58062–58063, September 29, 2004) (fenamidone - 10X factor retained due to lack of DNT study); but see 69 FR 52182, 52187, August 25, 2004) (folpet - 10X removed despite lack of DNT study because the DNT study is unlikely to change RfD). On the other hand, EPA's weight-of-the-evidence evaluation of any identified increased sensitivity in the young has tended to have the opposite effect. Rather than retaining the 10X factor simply because increased sensitivity is found, EPA has evaluated whether, in the context of the entire database, there exists a clearly-defined no effect threshold for the more sensitive effects in the young (i.e. is the effect ''well-characterized'') and whether EPA's RfD selection has provided an adequate margin of safety to protect against the effects seen in the young. In circumstances where the increased sensitivity is well-characterized and the RfD otherwise provides at least a 100X margin of safety for these effects, EPA has concluded it is safe to remove the additional children's safety factor. (See, e.g., 69 FR 63083, 63092–63093, October 29, 2004) (pyraclostrobin - 10X factor removed because additional sensitivity well-characterized and an adequate margin of safety); 69 FR 58290, 58295, September 30, 2004) (cyazofamid - 10X factor removed because additional sensitivity well-characterized and an adequate margin of safety); but see 69 FR 62602, 62610, October 27, 2004) (deltamethrin - 10X factor lowered but not removed taking into consideration level at which additional sensitivity was observed)). As these decisions evidence, the determination on the children's safety factor is heavily dependent on the results from the toxicity studies specific to the pesticide in question. (See, e.g., 70 FR 14535, 14541–14542, March 23, 2005) (dinotefuran - 10X factor retained as to some risk assessments due to the lack of a developmental immunotoxicity study; no additional factor on any risk assessment found necessary to address lack of a DNT study).

2. *The Developmental Neurotoxicity Study and chlorothalonil*. The States claim that several of the pesticides named in the petition are ''neurotoxins'' and that, therefore, a DNT study is required and EPA must retain the children's safety factor until the DNT study is submitted. As to the alleged legal requirement to retain the children's safety factor due to the absence of a DNT study, the States argue ''the statute requires that a tolerance safety determination include consideration of . . . the special neurological susceptibility of infants and children as reflected in developmental neurotoxicity studies.'' (Ref. 1 at 9).

Precisely what the States are arguing here is somewhat unclear. To the extent they are claiming that the statute requires that pesticides be evaluated in a DNT study, their argument is without a basis. Although the statute does require EPA to consider the ''special susceptibility of infants and children to pesticide chemical residues, including neurological differences between infants and children and adults . . .,'' (21 U.S.C. 346a(b)(2)(C)(i)(II)), it does not specify any particular study that must be reviewed, leaving the matter to EPA's discretion. In fact, all of the five core toxicological studies required for agricultural pesticides (developmental toxicity study in two species, 2-generation reproduction study in rats, and chronic toxicity study in two species) include an evaluation of potential neurological effects. (Ref. 24 at 2).

It appears more likely that the States are arguing that EPA has concluded that a DNT study is required for neurotoxins. (Ref. 1 at 10). The States, however, do not claim that chlorothalonil is a neurotoxin. EPA agrees that the evidence does not show chlorothalonil to be neurotoxic and has accordingly not required a DNT for this pesticide. (Ref. 24 at 2–3). Therefore, this portion of the States' petition does not support its claim that the additional 10X factor should be retained as to chlorothalonil.

Moreover, even had the States claimed that a DNT is required as to chlorothalonil, that allegation alone would not have been enough to demonstrate that the 10X factor should be retained. In the Children's Safety Factor Policy, EPA makes clear that, like any other missing study, the absence of the DNT study does not trigger a mandatory requirement to retain the default 10X value. Rather, whether the additional safety factor is retained depends on an individualized assessment centering on the question of whether ''a DNT study is likely to identify a new hazard or effects at lower dose levels of the pesticide that could significantly change the outcome of its risk assessment . . . .'' (Ref. 4 at 27). For this reason, EPA denied objections to various tolerance rulemakings filed by the Natural Resources Defense Council (NRDC) regarding DNT studies and the children's safety factor. There, DNT studies had been required but not yet submitted. EPA rejected NRDC's argument that the potential for a DNT study to identify harmful effects at lower levels than seen in other studies alone requires that the children's safety factor be maintained. EPA wrote:

> The statute specifically grants EPA discretion to apply a different additional safety factor where EPA can conclude based on reliable data that the different factor is safe for infants and children. NRDC has made no argument that would justify an across-the-board conclusion that in the absence of a DNT study an individual examination of the existing data pertaining to a pesticide cannot provide a reliable basis for concluding that a different safety factor would be safe for infants and children. NRDC's claim that a DNT study may lower EPA's RfD (which EPA does not disagree with) is not by itself sufficient to bar EPA from making a case-by-case inquiry into the safety of a different additional safety factor for the protection of infants and children in the absence of such a study.

(70 FR 46706, 46724 (August 10, 2005)). Because NRDC made no pesticide-specific allegations regarding the challenged pesticides, EPA dismissed NRDC's objections to a lowering of the children's safety factor.

3. *Endocrine effects*. The States note that the statute requires EPA to consider, in making safety determinations as to tolerances, whether a pesticide has an effect that mimics estrogen or has other endocrine effects, (see 21 U.S.C. 346a(b)(2)(D)(viii)), and to establish an endocrine screening program, (see 21 U.S.C. 346a(p)). The States claim that, as a matter of law, because assessments under the endocrine screening program have not been completed, EPA must retain the children's safety factor as to the pesticides in the petition (and presumably for all other pesticides as well). The States are incorrect. The statute imposes no mandatory bar on, or other limitation of EPA's discretion regarding, adjustment or removal of the children's safety factor pending completion of the endocrine screening program. Further, EPA has acted reasonably in not rigidly tying its safety factor decisions to completion of the endocrine screening program given the available data it has on the potential for pesticides in general, and chlorothalonil in particular, to cause adverse endocrine effects.

a. *The States' position is contradicted by the statute and legislative history*. As discussed above, the children's safety factor does not apply in some type of automatic manner whenever any data gap is identified. Rather, the statute, in clear and unmistakable language, grants EPA discretion to make a fact-based determination of whether a safety factor different than the 10X default value is safe for children:

> Notwithstanding such requirement for an additional margin of safety, the Administrator may use a different margin of safety for pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.

21 U.S.C. 346a(b)(2)(C). There is nothing in FFDCA section 408(p) concerning the endocrine screening program that contradicts the discretion given EPA in the children's safety factor provision. In fact, subsection (p)(6) expressly addresses ''Agency Action'' required on the basis of the endocrine screening program and that provision mentions only agency action upon the finding of an endocrine effect, not actions, such as retaining the children's safety factor, that might be mandated by the mere establishment of the program. 21 U.S.C. 346a(p)(6). If Congress had intended that the mere establishment of the endocrine screening program should have the dramatic and far-reaching effect of requiring EPA to apply automatically an additional 10X safety factor for each and every pesticide for the several years needed to complete the screening program, it is surprising that this intent finds neither mention in the statutory language nor any comment in the legislative history.

This lack of a connection between the endocrine screening provision and the children's safety factor provision is understandable given the legislative origins of the endocrine screening program. The endocrine screening provision was not a well-integrated component in the bills comprising the long history of the legislative debate over revision of section 408. Rather, the endocrine screening provision arose in a context outside of FFDCA section 408, and even outside the context of pesticide regulation. The endocrine screening provision first appeared as an amendment to an unenacted bill updating the Safe Drinking Water Act (''SDWA'') in 1994. (S. 2019, 103rd Cong., 2d Sess, 20(l) (June 15, 1994)). It was again appended to amendments to the SDWA in 1995 although no final action was taken on the bill that year. (S. 1316, 104th Cong., 1st Sess., 28(g) (December 4, 1995)). It was only at the last minute that the endocrine screening program language proposed for the SDWA was inserted in the FQPA, (compare H.R. 1627, 104th Cong., 2nd Sess., 142 Cong. Rec. H8127 (July 23, 1996) with H.R. 1627, 104th Cong., 1st Sess. (May 12, 1995)), and much more modest language on endocrine screening included in amendments to the SDWA passed contemporaneously with the FQPA. (See S. 1316, 104th Cong., 2nd Sess. 404 (July 18, 1996) (full estrogenic screening program present in SDWA bill only 2 weeks before passage of FQPA); H.R. 3604, 104th Cong., 2nd Sess. (June 18, 1996) (same)).

In sum, under section 408(b)(2)(C) EPA clearly has the discretion to determine, in any given case, whether it has reliable data to choose a factor different than the 10X default value. Not only is there no statutory language supporting the States' argument in favor of automatic retention of the 10X until completion of the endocrine screening program but the legislative history is in no way supportive of construing the enactment of the program as intended to have such a dramatic impact. Further, since the enactment of the FQPA, EPA's contemporaneous and consistent approach to the endocrine screening program has been to treat that information-gathering exercise as not imposing some type of statutorily-prescribed, automatic injunction barring removal of the children's safety factor until completion of information-gathering under the program.

b. *Endocrine screening program builds upon the existing pesticide database bearing on endocrine effects*. The endocrine screening program was not created in a vacuum. Rather, the endocrine screening program, developed in consultation with knowledgeable scientists from academia, government, industry, and environmental groups and a wide range of interested stakeholders, builds upon work performed by EPA's Office of Pesticide Programs in examining the potential adverse endocrine effects of pesticides. Most of the critical tests that are projected to be used in the endocrine disruptor screening program are built on tests that have been developed and used for years in evaluating the safety of pesticides. Thus, while the endocrine screening program will further extend the Agency's understanding of the potential for pesticides and other substances to cause adverse endocrine effects, EPA already has substantial information on the degree to which pesticides cause such effects. These available data allow EPA to make weight-of-the-evidence assessments of a pesticide's ability to cause adverse effects due to endocrine disruption.

As described in detail in Unit III.D., EPA's endocrine disruptor screening program closely follows recommendations made to EPA by the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), a task force comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists. 63 FR 71542, 71544 (December 28, 1998). The EDSTAC presented a comprehensive report in August 1998 addressing both the scope and elements of the endocrine screening program. The EDSTAC's recommendations were largely adopted by EPA.

As recommended by EDSTAC, EPA adopted a two-tier testing regime with the first tier involving screening ''to identify substances that have the potential to interact with the endocrine system'' and the second tier involving testing ''to determine whether the substance causes adverse effects, identify the adverse effects caused by the substance, and establish a quantitative relationship between the dose and the adverse effect.'' (Id. at 71545). ''The outcome of Tier 2 is designed to be conclusive in relation to the outcome of Tier 1.'' (Id. at 71554–71555). EPA also accepted the EDSTAC's detailed recommendations concerning the assays for Tier 1 screening and Tier 2 testing including a battery of short-term *in vitro* and *in vivo* assays for the Tier 1 screening exercise and five longer-term reproduction studies for Tier 2 testing that, with one exception, ''are routinely performed for pesticides with widespread outdoor exposures that are expected to affect reproduction.'' (Id. at 71555). EPA is examining, pursuant to the suggestion of the EDSTAC, modifications to these studies to enhance their ability to detect endocrine effects.

The primary proposed Tier 2 study relevant to endocrine effects on humans is the 2-generation reproductive toxicity study in rats. This is one of the core studies required for all food-use pesticides since 1984. (40 CFR 158.340(a)). In this reproduction study, ''potential hormonal effects can be detected through behavioral changes, ability to become pregnant, duration of gestation, signs of difficult or prolonged parturition, apparent sex ratio (as ascertained by anogenital distances) of the offspring, feminization or masculinization of offspring, number of pups, stillbirths, gross pathology and histopathology of the vagina, uterus, ovaries, testis, epididymis, seminal

vesicles, prostate, and any other identified target organs.'' 63 FR at 71555. In fact, EPA, in 1998, in discussing this study's use in Tier 2, identified 39 endpoints examined in this study relevant to estrogenic, androgenic, or thyroid effects. At that time, EPA noted that it was evaluating whether to add another 10 endocrine-related endpoints to the study protocol to enhance the utility of the study to detect endocrine effects. Id. at 71555–71556. Despite the ongoing evaluation of additional endpoints, EPA has concluded that ''the existing 2-generation mammalian assay is valid for the identification and characterization of reproductive and developmental effects, including those due to endocrine disruption, based on the long history of its use, the endorsement of the 1998 test guideline by the FIFRA Scientific Advisory Panel, and acceptance by member countries of the Organizations for Economic Cooperation and Development (OECD).'' (Ref. 25).

Although the 2-generation rat reproduction study currently is considered the definitive mammalian study to evaluate the adverse outcomes of endocrine disruptors for the endocrine screening program, it is not the only study routinely required or submitted for pesticides that provides information on potential endocrine effects. Information regarding endocrine effects is available from the other standard required toxicity studies including the subchronic bioassays (rat and dog), chronic bioassays (rat and dog), the cancer bioassays (rat and mouse), and prenatal development toxicity studies (usually the rat and rabbit). The subchronic, chronic, and cancer bioassays evaluate, among other things, the clinical signs and symptoms of the test animals exposed to a pesticide. In addition, at the conclusion of the test, animals are sacrificed and their organs are removed, weighed and subjected microscopically to examination for evidence of any pathology. The organs that play a critical role in the endocrine system (e.g., testes, epididymides, uterus, ovaries, mammary glands, and thyroid with parathyroid) are included in this evaluation. If an endocrine tissue (e.g., thyroid, testes, mammary gland) is identified as a target organ (particularly for carcinogenesis) in the standard toxicity studies, often the pesticide registrant will submit special studies that measure circulating levels of certain hormones (e.g., thyroid, luteinizing hormone, estrogen, or testosterone) to identify the mode of action. The required standard prenatal developmental toxicity studies would also detect the consequences of endocrine influences on fertility and pregnancy (e.g., litter size and loss) and development (e.g., fetal viability, altered sex ratios, and morphology). For example, developmental anomalies indicative of endocrine disruption would be assessed and include hypospadias, anogenital distance, and undescended testis. If a DNT study is required for a pesticide, that study will provide further information concerning potential endocrine effects. The DNT study involves exposure of the test animals from gestation through lactation and observation of effects on neurological function including motor activity, auditory startle, learning and memory and neuropathology at various ages through postnatal day 60. Additionally, DNT studies include evaluations of such potential endocrine-mediated effects such as effects on postnatal growth, reproduction and on developmental landmarks of puberty.

For food-use pesticides, therefore, EPA generally has an substantial database bearing on potential adverse endocrine effects. Not only does EPA require a 2-generation reproduction study in rats for such pesticides, but also requires data in multiple species on subchronic and chronic toxicity and developmental toxicity which bear on, among other things, potential endocrine effects, including effects beyond those examined in the 2-generation reproduction study. Thus, EPA believes that in many instances the totality of the information gleaned from current data required for pesticides used on food will make it is possible to develop a meaningful weight-of-the-evidence determination on the potential of the pesticide to adversely effect the endocrine system.

c. *Data bearing on chlorothalonil.* EPA has multiple data sets on chlorothalonil submitted both prior to and subsequent to the 1998 reregistration eligibility decision for chlorothalonil. This database includes subchronic and chronic toxicity testing in multiple species, developmental toxicity testing in multiple species, and 2-generation rat reproduction tests, including a 2-generation rat reproduction test under the most recent testing guidelines. None of these tests show any evidence of endocrine effects. Rather, the main toxic effects associated with exposure to chlorothalonil appear to be gastric lesions and kidney toxicity. As explained in more detail in the following unit, these two adverse effects occur through a non-hormonally-mediated mechanism. The gastric lesions are due to chlorothalonil's irritant effect on the stomach causing forestomach lesions. The kidney toxicity is produced as a result of enzymatic reactions in the kidney that cause perturbation of mitochondrial respiration, osmotic changes, and vacuolar degeneration.

Accordingly, EPA concludes that it has adequate reliable data on the potential of chlorothalonil to disrupt the endocrine system to support its decision that it will be safe for children to remove the additional 10X safety factor.

4. *Cumulative effects.* The States assert that ''as a matter of law'', EPA must retain the children's safety factor for each of the pesticides due to an alleged lack of data on cumulative effects from substances sharing a common mechanism of toxicity. With regard to chlorothalonil in particular, the States note that EPA acknowledged in the RED that chlorothalonil is a member of the polychlorinated fungicide class of pesticides but had not issued a determination on common mechanism by the time the States filed their petition. (Ref. 1 at 15). The States argue that EPA ''did not have reliable data on which to base a deviation from the tenfold factor'' because it lacked, among other things, data on the cumulative risk of chlorothalonil and other pesticides with a common mechanism of toxicity. (Id. at 16).

The States are incorrect. First, as discussed above, FFDCA does not require the children's safety factor to be applied automatically whenever any data gap is identified. EPA has discretion to establish an appropriate safety factor based on the particular facts related to a chemical. Second, as discussed below, available reliable data indicate that there is no common mechanism of toxicity for chlorothalonil with other members of the polychlorinated fungicide class of pesticides so a cumulative risk assessment is not appropriate and removal of the children's safety factor is authorized.

a. *Agency approach to conducting cumulative risk assessments.* Section 408(b)(2)(C)(i)(III) of the FFDCA directs EPA to assess risk of pesticide chemical residues to infants and children based on ''available evidence concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity.'' 21 U.S.C. 346a(b)(2)(C)(i)(III). The Agency's process for determining whether a substance has a cumulative effect includes two primary steps: determining whether a substance has a common mechanism of toxicity with another

chemical and if so, then conducting a cumulative effects risk assessment.

The EPA defines a common mechanism of toxicity as ''two or more pesticide chemicals or other substances that cause a common toxic effect to human health by the same, or essentially the same, sequence of major biochemical events. Hence, the underlying basis of the toxicity is the same, or essentially the same, for each chemical.'' (Ref. 26 at 4). To determine whether substances have a common mechanism of toxicity, EPA first identifies a preliminary grouping of substances that might cause a common toxic effect based on factors such as structural similarity, mechanism of pesticidal action, general mechanism of mammalian toxicity, and particular toxic effect. After conducting a detailed evaluation of available toxicological data for each substance and determining the mechanism by which each substance causes a common toxic effect, the Agency selects a common mechanism group based on similarities in the nature and sequence of the major biochemical events that cause toxicity. (See generally Ref. 24).

Once EPA concludes that a group of pesticides have a common mechanism of toxicity, EPA conducts a cumulative effects risk assessment. Depending upon the number of substances in the group, the extent of the pesticide use, the level of risk posed by the individual members in the group, and the levels of residues, EPA will determine whether a screening-level or more refined comprehensive cumulative effects risk assessment is appropriate. (See generally Ref. 27). EPA evaluates a range of data to conduct the cumulative effects risk assessment, including consideration of the relevant timeframe for the common mechanism effect, the pathways of exposure, the amount of exposure, and the population of concern, including any important subpopulations (e.g., children). In its final characterization of the cumulative effects risk, EPA determines the need for any uncertainty and safety factors based on any uncertainties identified during the risk assessment process or any need to protect against risks to exposed populations and important subgroups who may be at disproportionate risk (e.g., children).

b. *Common mechanism of toxicity evaluation of chlorothalonil and other polychlorinated fungicides*. In the chlorothalonil RED, chlorothalonil was mentioned as a member of the polychlorinated fungicide class of pesticides. (Ref. 10 at 100). Other members of this class include hexachlorobenzene (HCB), pentachlorophenol (PCP), and pentachloronitrobenzene (PCNB). This class was loosely assembled based only on structural similarities between chlorothalonil and other chemicals and mention of the class was not intended to demonstrate that these pesticides shared a common mechanism of action. Subsequent to the promulgation of the chlorothalonil RED, EPA has gained experience in making common mechanism of toxicity determinations and has released a policy guidance regarding how common mechanism questions should be approached. (Ref. 26). After reviewing the available data on chlorothalonil and the other polychlorinated fungicides, EPA can now conclude that chlorothalonil does not share a common mechanism of toxicity with these pesticides.

The available data demonstrate that chlorothalonil produces cancer effects (i.e., renal (kidney) tubular adenomas and carcinomas and papillomas of the forestomach in rats) as well as noncancerous effects (i.e., gastric lesions and kidney toxicity). (Ref. 24 at 5–8). Chlorothalonil induces renal tumors and kidney toxicity by bioactivating cysteine conjugates which leads to the production of chlorothalonil's thiol metabolites. These metabolites disrupt mitochondrial respiration in the kidney resulting in irritation, cytotoxicity, cell necrosis, increased cell proliferation, and restorative hyperplasia. The noncancerous kidney toxicity occurs during this process prior to the end result, which is adenomas in the tubular cells of the kidneys. (See Ref. 28). Similarly, chlorothalonil causes forestomach tumors and gastric lesions through a non-genotoxic mechanism involving irritation, cytotoxicity, cell necrosis, increased cell proliferation, and restorative hyperplasia.

None of the other chemicals in the polychlorinated fungicide class cause forestomach tumors and only one, HCB, causes renal tumors. HCB's toxicological profile, however, is far different than chlorothalonil's. HCB's primary target organ is the liver. HCB causes liver damage and tumors through disruption of the enzymes producing heme (an essential component of hemoglobin) leading to the build up of a heme-precusor, porphyrins, which can be toxic in excessive amounts. This condition is commonly referred to as porphyria, and hepatic (liver) porphryia is characterized by, in addition to liver damage, neurological effects. Although the liver is the organ most sensitive to HCB exposure; some studies have shown that HCB can cause renal toxicity and tumors. HCB, however, does not produce these renal effects by the same biochemical mechanism of action as chlorothalonil. HCB studies show that renal tumors may result from an accumulation of protein droplets in the kidney caused by an accumulation of a kidney cell substance called alpha-2U-globulin or an accumulation of porphyrins in the urine. There is no evidence that chlorothalonil leads to the accumulation of either of these substances. Further, metabolism studies with HCB show no evidence that HCB results in the production of cysteine conjugates and their byproducts, which lead to the renal toxicity seen with chlorothalonil.

Based on the foregoing, the available data show that chlorothalonil does not have a common mechanism of toxicity with any of the chemicals in the polychlorinated fungicide class. FFDCA does not require EPA to conduct a cumulative effects risk assessment for chemicals that do not have a common mechanism of toxicity. Therefore, EPA concludes that it has adequate reliable data on the potential cumulative effects of chlorothalonil to support its decision that it will be safe for children to remove the additional 10X safety factor.

5. *Conclusion*. Contrary to the States' contentions, EPA does not lack reliable data on chlorothalonil pertaining to neurotoxicity, endocrine effects, or cumulative effects from substances with a common mechanism of toxicity. Therefore, the States' objection to the removal of the children's safety factor has not been substantiated. Because the States' argument that the chlorothalonil tolerances are unsafe rested wholly on their assertion that retention of the children's safety factor was required, their petition to revoke the chlorothalonil tolerances is denied.

## VIII. Response to Comments on the Petition to Revoke

Many points raised in comments from the pesticide industry groups and individual pesticide manufacturers have been specifically relied upon by EPA in its decision. To the extent these commenters addressed issues not addressed in this Order or presented arguments that were not necessary to reach in responding to the petition, EPA expresses no opinion on such comments. One such issue, however, deserves brief mention. GB Biosciences contested the States' claim regarding the potential cumulative effects of chlorothalonil and HCB by pointing out that HCB is only a minor contaminant of certain pesticides and, thus, it is relatively meaningless whether chlorothalonil and HCB share a common mechanism because cumulative exposure to chlorothalonil

and HCB would not be substantially greater than chlorothalonil alone. (Ref. 18 at 5). This assertion appears to have some force but EPA did not analyze it closely due to its conclusion that chlorothalonil and HCB operate by different mechanisms.

Some of the comments made by CLA have previously been submitted in the public participation procedures EPA used in developing the various FQPA science policies, including the children's safety policy. EPA reaffirms its earlier responses to such comments. (See Ref. 29). Further, EPA notes its disagreement with CLA's claim that a pesticide database cannot be incomplete with regard to endocrine effects because EPA has not imposed data requirements pursuant to the endocrine screening program. This claim is no more correct than the States' opposite assertion - that all pesticide databases are incomplete and require retention of the 10X factor because EPA has not imposed data requirements under the endocrine screening program. EPA's standard data requirements on pesticides address many endocrine-related issues and to the extent any of those data are missing, the relative incompleteness of the database relative to endocrine effects would have to be taken into account in making a decision on the children's safety factor.

NRDC's comment on the sensitivity of the DNT study was previously addressed by EPA in its Order denying NRDC's objections to various tolerances. See 70 FR 46706, 46722–46724 (August 10, 2005). NRDC's other comments concerned matters (e.g., exposure of farm children to pesticides) that were not raised in the States' petition and thus are not relevant to EPA's response to that petition.

Comments citing the alleged benefits of some of the pesticides named in the petition are not relevant to the petition because benefit considerations are strictly circumscribed under section 408 and have no applicability to the threshold risk issues involved in the petition. See 21 U.S.C. 346a(b)(2)(B).

## IX. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's order denying, in part, a petition filed under section 408(d) of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this action.

## X. Submission to Congress and the Comptroller General

The Congressional Review Act, (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

## XI. References

1. Petition of New York, California, Connecticut and Massachusetts for Modification of Tolerances for Pesticide Chemical Residues Established in Reregistration Eligibility Determinations for the Following Chemicals: Alachlor; Chlorothalonil; Methomyl; Metribuzin; Thiodicarb (December 17, 2004) (petition addressed to Michael O. Leavitt, Administrator, United States Environmental Protection Agency).

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4. Office of Pesticide Programs, US EPA, Determination of the Appropriate FQPA Safety Factor(s) in Tolerance Assessment 13–16 (January 31, 2002) (available at *http://www.epa.gov/oppfead1/trac/science/determ.pdf*).

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7. US EPA, Permanent Tolerances by Pesticide: Aug. 1996 TIS 13–14 (August 2002) (available at *http://www.epa.gov/oppsrrd1/tolerance/pdf__files/TolUniv8–05–2002.PDF*).

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10. Office of Prevention, Pesticides, and Toxic Substances, US EPA, Reregistration Eligibility Decision: Chlorothalonil (April 1999).

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14. Croplife America, Comments of CropLife America on the Petition of New York, California, Connecticut, and Massachusetts for Modification of Tolerances for Certain Pesticides (June 2005).

15. Pesticide Policy Coalition, Comments on Petition of Attorney Generals of New York, California, Connecticut and Massachusetts to Revoke or Modify Tolerances (June 15, 2005).

16. Monsanto Company, Docket ID Number OPP–2005–0050 (April 28, 2005).

17. Monsanto Company, Alachlor: Evaluation of the Potential for Endocrine Disruption (December 20, 2002).

18. GB Biosciences Corp., Docket ID Number OPP–2005–0050 (June 14, 2005).

19. GB Biosciences Corp., Chlorothalonil White Paper on Neurotoxicity and Endocrine Disruption (December 20, 2005).

20. Bayer Crop Science, Comments by Bayer CropScience Specific to the Named Chemicals Metribuzin (EPA 738–R–97–066) and Thiodicarb (EPA 738–R–98–022) (June 15, 2005).

21. DuPont Crop Protection, Re: Petition of New York, California, Connecticut, and Massachusetts for Modification of Tolerances for Certain Pesticides (June 9, 2005).

22. NRDC, Re: Petition of New York, California, Connecticut, and Massachusetts to Modify Tolerances for Alachlor, Chlorothalonil, Methomyl, Metribuzin, and Thiodicarb (May 9, 2005).

23. Office of Prevention, Pesticides, and Toxic Substances, US EPA, Memorandum from Douglas Dotson to Paula Deschamp, Metribuzin Acute and Chronic Dietary Exposure Assessments (April 17, 2006).

24. Office of Prevention, Pesticides, and Toxic Substances, US EPA, Memorandum from P.V. Shah to Pete Caulkins, HED Response to Questions Raised by SRRD Regarding Chlorothalonil (June 22, 2006).

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29. Office of Pesticide Programs, US EPA, Office of Pesticide Programs' Policy on the Determination of the Appropriate FQPA Safety Factor(s) For Use in the Tolerance Setting Process: Response to Comments (February 28, 2002) (available at *http://www.epa.gov/oppfead1/trac/science/fqpa__resp.pdf*).

**List of Subjects**

Environmental protection, pesticides, and pest.

Dated: July 24, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. 06–6605 Filed 8–1–06; 8:45 am]

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# Part V

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 18**

**Marine Mammals; Incidental Take During Specified Activities; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 18**

**RIN 1018–AT82**

## Marine Mammals; Incidental Take During Specified Activities

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) has developed regulations that would authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations for the covered period are similar to, and include all activities covered by the previous 16-month Beaufort Sea incidental take regulations that were effective from November 28, 2003, through March 28, 2005 (68 FR 66744, November 28, 2003). This rule is effective for 5 years from date of issuance.

We find that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. We base this finding on the results of 12 years of data on the encounters and interactions between polar bears, Pacific walrus, and Industry; recent studies of potential effects of Industry on these species; and oil spill risk assessments using oil spill trajectory models, polar bear density models, potential and documented Industry impacts on these species, and models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

**DATES:** This rule is effective August 2, 2006, and remains effective through August 2, 2011.

**ADDRESSES:** Comments and materials received in response to this action are available for public inspection during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

**FOR FURTHER INFORMATION CONTACT:** Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907–786–3810 or 1–800–362–5148, or Internet *craig_perham@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) through the Director of the Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. According to the MMPA, we shall allow this incidental taking if (1) we make a finding that the total of such taking for the 5-year regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, and (2) we issue regulations that set forth (a) permissible methods of taking, (b) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses, and (c) requirements for monitoring and reporting. If regulations allowing such incidental taking are issued, we issue Letters of Authorization (LOA) to conduct activities under the provisions of these regulations when requested by citizens of the United States.

The term ''take,'' as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the MMPA calls this Level A harassment); ''or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering'' (the MMPA calls this Level B harassment).

The terms ''small numbers,'' ''negligible impact,'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows. ''Small numbers'' is defined as ''a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.'' ''Negligible impact'' is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' ''Unmitigable adverse impact'' means ''an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat that may result in the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authorization, since 1993, Industry has requested, and we have issued a series of regulations for, incidental take authorization for conducting activities in areas of polar bear and walrus habitat. Since the inception of these incidental take regulations, polar bear/walrus monitoring observations associated with the regulations have recorded over 700 polar bear observations associated with Industry activities. The large majority of reported encounters have been passive observations of bears moving through the oil fields. Monitoring of Industry activities indicates that encounters with walrus are insignificant with only nine walrus observations during the same period.

A detailed history of our past regulations can be found in our most recent regulation, published on November 28, 2003 (68 FR 66744). In summary, these past regulations were published on: November 16, 1993 (58 FR 60402); August 17, 1995 (60 FR 42805); January 28, 1999 (64 FR 4328); February 3, 2000 (65 FR 5275); March 30, 2000 (65 FR 16828); and November 28, 2003 (68 FR 66744).

The most recent regulations were issued in response to a request submitted by the Alaska Oil and Gas Association (AOGA) on August 23, 2002. AOGA, on behalf of its members, requested that we promulgate regulations for nonlethal incidental take of small numbers of Pacific walrus and polar bears for a period of 5 years, originally projected to be from March

31, 2003, through March 31, 2008. To ensure that we had adequate time to thoroughly assess effects of Industry activities over the requested 5-year period, and to minimize disruptions related to a lapse in the regulations, we published a 16-month rule (68 FR 66744), on November 28, 2003, that expired on March 28, 2005. A lapse in authorization occurred from March 29, 2005, until publication of this rule, during which industry was liable for take of any polar bear and walrus.

From 1993 to 2004, under this series of regulations, 262 LOAs were issued for oil and as seismic surveys and drilling; development activities, such as construction and remediation; and production activities for operational fields. During this time period, 78 percent of LOAs issued were for exploratory activities, 12 percent for development, and 10 percent for production activities. Twenty one percent (55/262) of these activities actually observed a total of 726 polar bear sightings, and approximately 41 percent of these sightings occurred during production activities. In addition, seven activities observed walrus during the same time period.

**Summary of Current Request**

These regulations respond to the AOGA request of August 23, 2002, and to an August 2004 addendum to that request. These regulations also respond to a July 2004 request from BP Exploration (Alaska), Inc. (BPXA) for regulations to cover only their operations. The BPXA request is encompassed by the scope of the AOGA request. The combined requests are for regulations to allow the incidental nonlethal take of a small number of polar bear and Pacific walrus in association with oil and gas activities on the North Slope of Alaska. Industry has specifically requested that these regulations be issued for nonlethal take. Industry has indicated that, through implementation of the mitigation measures, it is confident a lethal take will not occur. The requests encompass the entire North Slope-wide oil and gas activities projected out to 2011.

AOGA's application indicates that they request regulations that will be applicable to any company conducting oil and gas exploration activities as described within the request. Members of AOGA include: Alyeska Pipeline Service Company; Marathon Oil Company; Anadarko Petroleum Corporation Petro Star, Inc.; BP Exploration (Alaska), Inc.; Phillips Alaska, Inc.; ChevronTexaco Corporation; Shell Western E&P, Inc.; Cook Inlet Pipe Line Company; Tesoro Alaska Company; Cook Inlet Region, Inc.; Total E&P USA; EnCana Oil & Gas (USA), Inc.; UNOCAL; Evergreen Resources, Inc.; Williams Alaska Petroleum, Inc.; ExxonMobil Production Company; XTO Energy, Inc.; and Forest Oil Corporation. The activities and geographic region specified in AOGA's request, and considered in these regulations, are described in the ensuing sections titled ''Description of Geographic Region'' and ''Description of Activities.''

Prior to issuing regulations at 50 CFR part 18, subpart J in response to this request, we must evaluate the level of industrial activities, their associated potential impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use. The recent petition and discussions with Industry regarding the petition addendum indicate that industrial activities during the 5-year period will be similar to the level of activities covered in the previous 16-month regulations discussed above (November 28, 2003, to March 28, 2005); however, the area of activity is expanding into the National Petroleum Reserve—Alaska (NPR–A).

**Description of Regulations**

The regulations that we are issuing include: Permissible methods of nonlethal taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. The geographic region and the type of industrial activities, as outlined in the ''Description of Activities'' section and assessed in these regulations, are similar to those in the regulations we issued on November 28, 2003.

These regulations do not authorize the actual activities associated with oil and gas exploration, development, and production. Rather, they authorize the nonlethal incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The Minerals Management Service (MMS), the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting activities on State lands and in State waters.

With final nonlethal incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover nonlethal take associated with exploration, development, or production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA. Applicants for LOAs must submit a plan to monitor the effects of authorized activities on polar bears and walrus. Applicants for LOAs must also include a Plan of Cooperation describing the availability of these species for subsistence use by Alaska Native communities and how they may be affected by Industry operations. The purpose of the Plan is to ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or the stock for subsistence uses. The Plan must provide the procedures on how Industry will work with the affected Native communities, including a description of the necessary actions that will be taken to: (1) Avoid or minimize interference with subsistence hunting of polar bears and Pacific walrus; and (2) ensure continued availability of the species for subsistence use. The Plan of Cooperation is further described in ''Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals.''

We will evaluate each request for an LOA for a specific activity and specific location, and may condition the LOA depending on specific circumstances for that activity and location. For example, an LOA issued in response to a request to conduct activities in areas with known, active bear dens or a history of polar bear denning, may be conditioned to require one or more of the following: forward Looking Infrared (FLIR) imagery flights to determine the location of active polar bear dens; avoiding all denning activity by 1 mile; intensified monitoring in a 1-mile buffer around the den; or avoiding the area during the denning period. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

**Description of Geographic Region**

These regulations allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area, referred to as the Beaufort Sea Region, as covered by our previous regulations. This region is defined by a north-south line through Point Barrow, Alaska, and includes all Alaska coastal areas, State waters, and all Outer Continental Shelf (OCS) waters east of that line to the Canadian border. The onshore region is the same north-south line at Point Barrow, 25 miles inland, and extending east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by these regulations.

**Description of Activities**

Activities covered in these regulations include Industry exploration, development, and production operations of oil and gas reserves, as well as environmental monitoring associated with these activities, on the northern coast of Alaska. Listed below are Industry-identified activities to be covered under the regulations.

Alaska's North Slope encompasses an area of 88,280 square miles and currently contains 11 oil and gas field units associated with Industry. These include the Greater Prudhoe Bay, Duck Island, Badami, Northstar, Kuparuk River, Colville River, Oooguruk, Tuvaq, Nikaitchuq, Milne Point, and Point Thomson. These units can encompass exploration, development, and production activities. In addition, some of these fields include associated satellite oilfields: Sag Delta North, Eider, North Prudhoe Bay, Lisburne, Niakuk, Niakuk-Ivashak, Aurora, Midnight Sun, Borealis, West Beach, Polaris, Orion, Tarn, Tabasco, Palm, West Sak, Meltwater, Cascade, Schrader Bluff, Sag River, and Alpine. Additional proposed satellite prospects identified within or near existing oil and gas field units, such as Pioneer Natural Resource's Gwydyr Bay leases and Kerr McGee's Two Bits Prospect are also analyzed in this rule.

*Exploration Activities*

Exploration activities may occur onshore or offshore and include: geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismic data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; subsea sediment sampling; construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-founded structures [steel drilling caisson (SDC)], ice pads and ice roads; oil spill prevention, response, and cleanup; and site restoration and remediation. Exploration activities could also include the development of staging facilities. The level of exploration activities is expected to be similar to the level during the past regulatory periods, although exploration projects may shift to different locations, particularly NPR–A.

The location of new exploration activities within the geographic region of the rule will, in part, be determined by the following State and Federal oil and gas lease sales:

*State of Alaska Lease Sales*

The State of Alaska practices area-wide leasing in which the State annually offers all available State acreage not currently under lease within areas that are already subjected to leasing. North Slope Area-wide Lease Sales are held annually in October. Five lease sales have been held to date. As of July 2004, there are 777 active leases in this area, encompassing 2.4 million acres. Beaufort Sea Area-wide Lease Sales are held annually in October. Four lease sales have been held to date. As of July 2004, there are 194 active leases in this area, encompassing 440,000 acres. Future State of Alaska lease sales will continue.

*Northeast Planning Area of NPR–A*

Two lease sales have been held in the Northeast Planning Area of NPR–A. The 1999 lease sale resulted in the sale of 133 tracts, and the 2002 sale resulted in the sale of 60 tracts. Acreage awarded under these two lease sales totals 1.4 million acres. Thirteen exploratory wells have been drilled to date. In June 2004, the BLM issued a Draft Environmental Impact Statement (DEIS) for the northeast planning area, proposing to expand the acreage available for leasing within this area. A Final EIS was published in January 2005, and in January 2006, BLM approved a new plan that amended the 1998 Record of Decision and expanded the lease areas around Teshekpuk Lake. Lease sales will occur at 2- and 3-year intervals. Production from new leases issued from these sales is not projected to occur during the regulatory period.

*OCS Lease Sales*

In February 2003, the MMS issued the FEIS for three lease sales planned for the Beaufort Sea Planning Area in the OCS. Sale 186 was held in September 2003, resulting in the leasing of 34 tracts. Sale 195 was held in March 2005. Sale 202 is scheduled for March 2007. While the disposition of the leases purchased is highly speculative at this time, it is probable that at least some seismic exploration and possibly some exploratory drilling could take place during the 5-year period of the regulations.

Exploratory drilling for oil is an aspect of exploration activities. Exploratory drilling and associated support activities and features include: Transportation to site; setup of up to 100-person camps and support camps (lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection; ice islands; ice roads; gravel hauling; gravel mine sites; road building; pipelines; electrical lines; water lines; road maintenance; buildings and facilities; operating heavy equipment; digging trenches; burying and covering pipelines; sea lift; water flood; security operations; dredging; moving floating drill units; helicopter support; and drill ships such as the SDC, CANMAR Explorer III, and the Kulluk.

During the regulatory period, exploration activities are anticipated to continue in the current oil field units, including those projects identified by Industry below.

*Oooguruk Unit*

The Oooguruk Unit is located adjacent to and immediately northwest of the Kuparuk River Unit in shallow waters of the Beaufort Sea, near Thetis Island. The unit operator, Pioneer Natural Resources, is currently conducting a feasibility study for the potential development of reservoirs encountered in previous exploration drilling. Pioneer may conclude the study and move forward with development and, ultimately, production activities during the regulatory period if results from the feasibility study prove favorable. Facilities would include an offshore production island between Thetis Island and the Colville River Delta, a 5.7-mile underground pipeline, where landfall will occur near the mouth of the Kalubik Creek.

*Nikaitchuq Unit*

The Nikaitchuq Unit is located near Spy Island, north of Oliktok Point and the Kuparuk River Unit, and northwest of the Milne Point Unit. Operator Kerr-McGee Oil and Gas Corporation drilled three exploratory wells on and immediately adjacent to Spy Island, 4 miles north of Oliktok Point in the ice-covered season of 2004–2005. Kerr-McGee is moving to develop this site as a future production area. Facilities will include three offshore production islands south of the Jones Island group and approximately 13 miles of underground pipeline connecting the sites to a mainland landfall near Oliktok Point.

*Two Bits Prospect*

Armstrong Oil and Gas filed a plan of operation with the State of Alaska to drill one to three onshore exploratory wells west of the Kuparuk River unit in 2005. Operations at the ''Two Bits'' prospect will occur either from an existing gravel pad (West Sak 18) or from an ice pad constructed

immediately adjacent to that pad. Kerr-McGee Oil and Gas Corporation is currently the operating company for this project.

Exploration activities will also occur beyond the current oil field units, including the Industry projects below.

*Nearshore Stratigraphic Test Well, Eastern Beaufort Sea*

The State of Alaska plans to drill a stratigraphic test well at one of two potential locations in State waters offshore of the 1002 area of the Arctic National Wildlife Refuge. One location is approximately 20 miles southwest of Kaktovik near Anderson Point; the second is approximately 30 miles southeast of Kaktovik near Angun Point. The locations are in water depths of 25–30 feet (ft), and drilling operations will be conducted in winter utilizing the SDC, a mobile offshore drilling unit. The test well drilling was originally planned to take place during the 2004–2005 drilling season; however, a decision to move forward has not yet been made.

*Shell Exploration and Production Company's Beaufort Sea Program*

Shell Exploration and Production Company is planning an open water seismic program, which will consist of an estimated 3,000 miles of 3D seismic line acquisition and site clearance surveys in the eastern Beaufort Sea. The open water seismic program will consist of two vessels, one active in seismic acquisition and the second providing logistical support. The open water program will involve a geotechnical investigation supported by a soil-boring vessel. The offshore open water seismic program is proposed to occur between August and October 2006, depending on ice and whaling activities.

An onshore/on-ice geotechnical program will acquire soil borings from approximately 200 ft onshore seaward to 10 kilometers (km) offshore. The work will be conducted on offshore ice over waters approximately 10 to 15 meters in depth. Shell will drill approximately 60 borings ranging from 35 to 75 ft in depth. Thermister strings will be placed in 2 or 3 borings and recovered a month later. The onshore/on-ice geotechnical program activities are proposed to occur in 2006.

*Cape Simpson Support Program; Ukpeagvik Inupiat Corporation (UIC)*

UIC has entered into lease agreements with the North Slope Borough to operate North Slope facilities between Prudhoe Bay and Barrow in support of oil and gas exploration activities. UIC is developing a staging area at Cape Simpson, between Smith Bay and Dease Inlet, on the Beaufort Sea coast. The following activities are likely to occur during their operations on the North Slope: Marine Transportation and Barging, Fixed and Temporary Camp Operations, Equipment and Materials Staging and Storage, Flight Operations, Ice Road Construction, and Exploration Site Support.

*Development Activities*

Development activities associated with oil and gas industry operations include: Road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic); runway construction; installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

In the recent petition, the Alpine West Development has been identified as an Industry development activity. The development and construction of five Alpine satellite drill sites (identified as CD–3 through CD–7), gravel roads, an airstrip, and pipelines is currently in its second year (2006). Two of the drill sites, CD–3 (also known as Fiord prospect or CD-North), and CD–4, (also known as the Nanuq prospect or CD-South), are in the Colville River Delta. The CD–3 drillsite is located north of CD–1 (Alpine facility) and is proposed to be a roadless development. The remaining drill sites are proposed to be connected to CD–1 by road. Three of the drill sites, CD–5 (also known as Alpine West prospect), CD–6 (Lookout prospect) and CD–7 (Spark prospect), are in the National Petroleum Reserve-Alaska (NPR–A). Construction of CD–3 and CD–4 drill sites began in winter 2004/2005, with production startup for both drill sites in late summer 2006. The three NPR–A drill sites are scheduled for construction from the winter 2007 through winter 2010. All drill sites are scheduled to be in production by summer 2010.

*Liberty*

BPXA is planning to develop the Liberty oil field in the Beaufort Sea using extended reach drilling (ERD) technology from onshore. The Liberty prospect is located approximately 5.5 miles offshore in 20 ft of water, approximately 8 miles east of the Endicott development. The development of Liberty was first proposed in 1998 when BPXA submitted a plan to the MMS for a production facility on an artificial island in Foggy Island Bay. In 2002, BPXA put the project on hold to review project design and economics after the completion of BPXA's Northstar project. In August 2005, BPXA moved the project onshore to take advantage of advances in extended reach drilling. Liberty wells will extend as much as 8 miles offshore.

*Production Activities*

Production activities encompass activities in support of oil and gas production within the oil and gas field units. These include: Personnel transportation (automobiles, airplanes, helicopters, boats, rolligons, cat trains, and snowmobiles); and unit operations (building operations, oil production, oil transport, restoration, remediation, and improvement of oil field operations). Production activities are permanent, year-round activities, whereas exploration and development activities are usually temporary and seasonal.

Apart from the production units and facilities, operated by BP Exploration Alaska, Inc. and ConocoPhillips Alaska, Inc., that have been covered under previous incidental take regulations (Greater Prudhoe Bay, Endicott, Milne Point, Badami, Northstar, Kuparuk River, Alpine), there are three developments that could possibly be in the oil production phase within the next 5 years. The Alpine West Development, operated by ConocoPhillips Alaska, Inc., is scheduled to begin oil production in 2006. NEPA assessment has been completed for this program.

Two other production projects are in earlier stages of development and have the potential to be producing oil within the timeframe of the regulations. They are the Oooguruk Development, operated by Pioneer Natural Resources Alaska, Inc. and the Nikaitchuq Development, operated by Kerr-McGee Oil and Gas Corporation. An Environmental Information Document was developed for Oooguruk and an Environmental Evaluation Document was developed for Nikaitchuq. We conducted our analysis of the potential for future production and the potential effects from these sites during the 5-year period of regulations using these environmental documents. The Service will review final NEPA documentation when it becomes available for Oooguruk and Nikaitchuq to determine whether the anticipated effects from production at each facility are within the scope of effects analyzed in this rule. If the activities and potential impacts are within the scope of activities and

impacts analyzed in this rule, LOAs may be issued for the activity.

Proposed production activities will increase the total area of the Industrial footprint by the addition of new facilities, such as drill pads, pipelines, and support facilities, in the geographic region; however, oil production volume is expected to decrease during the 5-year regulatory period, despite new fields initiating production. This is due to current producing fields reducing output and new fields not maintaining the loss of that output. Current monitoring and mitigation measures, described later, will be kept in place.

*Evaluation*

During the period covered by the regulations, we anticipate the level of activity per year at existing production facilities, as well as levels of new annual exploration and development activities, will be similar to that which occurred under the previous regulations, although exploration and development may shift to different locations and new production facilities will add to the overall Industry footprint. Additional onshore and offshore production facilities are being considered within the timeframe of these regulations, potentially adding to the total permanent activities in the area.

**Biological Information**

*Pacific Walrus*

The Pacific walrus (*Odobenus rosmarus divirgens*), which includes about 80 percent of the world's walrus population, occurs primarily in the Bering and Chukchi seas. The most recent reported survey estimate (1990) for the Pacific walrus population was approximately 200,000 animals. Currently, the size and trend of the walrus population is unknown.

Walrus distribution is closely tied to the movements of sea ice in the Chukchi and Bering seas. In winter and early spring, the entire walrus population congregates on the pack ice in the Bering Sea, south of St. Lawrence Island. As the ice edge retreats northward, females with dependent young move north into the Chukchi Sea. A few walrus may move east into the Beaufort Sea, but the majority of the population occurs south and west of Barrow, Alaska, which is outside the area covered by these regulations. Adult and subadult males remain to the south, where they come ashore at terrestrial ''haulouts'' in Bristol Bay, Alaska, or along the Russian coast. There are no known haulout sites from Point Barrow to Demarcation Point. As the ice edge advances southward in the fall, walrus reverse their migration, where they re-group on the Bering Sea pack ice.

Pacific walrus mainly feed on bivalve mollusks obtained from bottom sediments along the shallow continental shelf, typically at depths of 80 meters (262 ft) or less. Walrus are also known to feed on a variety of benthic invertebrates such as worms, snails, and shrimp and some slow-moving fish; some walrus feed on seals and seabirds. Mating usually occurs between January and March. Implantation of a fertilized egg is delayed until June or July. Gestation lasts 11 months (a total of 15 months after mating) and birth occurs between April and June during the annual northward migration. Calves weigh about 63 kilograms (139 pounds) at birth and are usually weaned by age two. Females give birth to one calf every 2 or more years. This reproductive rate is much lower than other pinnipeds; however, some walrus may live to age 40 and remain reproductively active until late in life.

Walrus sightings in the Beaufort Sea have consisted solely of widely scattered individuals and small groups. For example, while walrus have been encountered and are present in the Beaufort Sea, there were only five sightings of walrus between 146° and 150° W. during annual aerial surveys conducted from 1979 to 1995. In addition, since 1993, nine walrus sightings have been reported during Industry monitoring efforts.

*Polar Bear*

Polar bears (*Ursus maritimus*) occur throughout the Arctic. In Alaska, they have been observed as far south in the eastern Bering Sea as St. Matthew Island and the Pribilof Islands, but they are most commonly found within 180 miles of the Alaskan coast of the Chukchi and Beaufort seas, from the Bering Strait to the Canadian border. Two stocks occur in Alaska: (1) Bering-Chukchi Seas stock; and (2) the Southern Beaufort Sea stock. A reliable population estimate is not available for the Bering-Chukchi Sea stock. The Southern Beaufort Sea population (from Point Hope, Alaska, to Banks Island, Northwest Territories) was estimated at 2,200 bears in 2002. The most recent population growth rate was estimated at 2.4 percent annually based on data from 1982 through 1992, although the population is believed to have slowed its growth rate or stabilized since 1992.

Polar bear distribution and use of coastal areas during the fall open water period has increased in recent years in the Beaufort Sea. The increase in use of coastal areas by polar bears has been shown to be related to environmental conditions that affect the position of the pack ice at that time of year. In years when the pack ice has retreated to a maximum extent, greater numbers of bears are encountered on shore. Based on the increasing trend of retreating ice during summer months, we anticipate that increased numbers of polar bears will be using terrestrial areas during the fall period. In addition during the last 10 years a higher proportion of radio-collared female polar bears have denned on land, 60 percent, versus sea ice, 40 percent. In the previous 15 years approximately 40 percent of the dens were located on land and 60 percent were on sea ice. The geographic distribution of land denning also appears to have shifted westerly in recent years. Although the total numbers of dens that occur annually is relatively small, we expect a greater likelihood that dens will be located in suitable terrestrial habitats in the future based on trends. Generalized terrestrial denning habitat has been delineated within the area and is useful in planning and evaluating industrial projects.

The changes in fall coastal polar bear distributions and denning do not occur as a steady constant and fluctuate annually. The recent changes in fall distribution and den site selection are believed to be associated with climatic changes and corresponding effects on sea ice habitat.

To monitor potential changes from 2000 to 2005, the Service conducted systematic coastal aerial surveys for polar bears from Point Barrow to the Alaska-Canada border. During these surveys, up to 15 polar bears at Cross Island and 80 polar bears on Barter Island were observed within a 2-mile radius of subsistence-harvested bowhead whale carcasses. During one survey in October 2002, the Service observed 114 polar bears on barrier islands and the coastal mainland from Cape Halkett to Barter Island, a distance of approximately 1,370 km. An additional estimated 100 bears were in the Barrow vicinity, outside of the survey area during 2002.

During these surveys, an average of 43 polar bears per survey year (range: 16 to 74 bears/survey year) were observed in the portion of the North Slope coastline where the North Slope oil and gas facilities are located. This portion, from Atigaru Point to Brownlow Point, contained approximately 600 km of main coastline and 300 km of barrier island coastline. The average density of bears per survey-year in this area was 20.0 km per bear. The average density of bears per survey-year in the region

around Kaktovik, where bears fed on subsistence-harvested carcasses, was 1.94 km per bear.

Polar bears spend most of their time in nearshore, shallow waters over the continental shelf associated with the shear zone and the active ice adjacent to the shear zone. Sea ice and food availability are two important factors affecting the distribution of polar bears. Although opportunistic feeders, polar bears feed primarily on ringed seals (*Phoca hispida*) and to a much lesser extent on bearded seals (*Erignathus barbatus*). Polar bears may also come onshore to feed on human refuse or marine mammal carcasses found on coastal beaches and barrier islands.

Nearshore, Alaskan Southern Beaufort Sea polar bears are generally widely distributed in low numbers across the Beaufort Sea area; however, polar bears have been observed congregating on the barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale (*Balaena mysticetus*) carcasses on Cross and Barter Islands and Point Barrow areas where bowhead whales are harvested for subsistence purposes.

Although insufficient data exist to accurately quantify polar bear denning along the Alaskan Beaufort Sea coast, dens in the area are less concentrated than for other areas in the Arctic. Females without dependent cubs breed in the spring. Females with cubs do not mate. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; however, other polar bears may excavate temporary dens to escape harsh winter winds. An average of two cubs is usually born, and after giving birth, the female and her cubs remain in the den where the cubs are nurtured until they can walk and stay close to the female. Reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3 to 4 years, and a female polar bear may produce about 8 to 10 cubs in her lifetime; 50 to 60 percent of the cubs will survive. Female bears can be quite sensitive to disturbances during this denning period.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs may increase. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies indicate that denning in multi-year pack ice in the Alaskan Beaufort Sea is common. Between 1981 and 1991, of the 90 dens found in the Beaufort Sea, 48 (53 percent) were on pack ice. Terrestrial denning accounted for 47 percent in the same study. The highest density of land dens occur along the coastal barrier islands of the eastern Beaufort Sea and within the Arctic National Wildlife Refuge. Researchers also suggested that females exhibit fidelity to den substrates (*e.g.*, sea ice or terrestrial) rather than geographic locations.

**Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals**

Pacific walrus and polar bears have been traditionally harvested by Alaska Natives for subsistence purposes. The harvest of these species plays an important role in the culture and economy of many villages throughout coastal Alaska. Walrus meat is often consumed, and the ivory is used to manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to manufacture cold weather gear; however, their meat is also consumed. Although walrus and polar bears are a part of the annual subsistence harvest of most rural communities on the North Slope of Alaska, these species are not as significant a food resource as bowhead whales, seals, caribou, and fish.

An exemption under section 101(b) of the MMPA allows Alaska Natives who reside in Alaska and dwell on the coast of the North Pacific Ocean or the Arctic Ocean to take polar bears and walrus if such taking is for subsistence purposes or occurs for purposes of creating and selling authentic native articles of handicrafts and clothing, as long as the take is not done in a wasteful manner. Sport hunting of both species has been prohibited in the United States since enactment of the MMPA in 1972.

*Pacific Walrus—Harvest Information*

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska as the primary range of Pacific walrus is west and south of the Beaufort Sea. Walrus constitute a small portion of the total marine mammal harvest for the village of Barrow. According to records from the Service's Marking, Tagging and Reporting Program; from 1994 to 2004, 322 walrus were reported taken by Barrow hunters. Reports indicate that up to four animals were taken east of Point Barrow, within the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walrus unless the opportunity arises. They have reported taking only three walrus since the inception of the regulations. Two percent of the walrus harvest for Barrow, Nuiqsut, and Kaktovik has occurred within the geographic range of the incidental take regulations since 1994.

*Polar Bear—Harvest Information*

Based on movements, the Southern Beaufort Sea polar bear stock inhabits areas of Alaska and Canada. Alaska Natives from coastal villages are permitted to harvest polar bears. There are no restrictions on the number, season, or age of polar bears that can be harvested in Alaska unless the population is declared depleted under the MMPA and harvest is contributing to depletion. Presently, it is thought that the current levels of harvest are sustainable for the Southern Beaufort Sea population. Although there are no restrictions under the MMPA, a more restrictive Native-to-Native agreement between the Inupiat from Alaska and the Inuvialuit in Canada was created in 1988. This agreement, referred to as the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement does not have the force of law from either the Canadian or the U. S. governments, the users have abided by the terms set forth by the Inuvialuit-Inupiat Agreement. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Inuvialuit-Inupiat Agreement set the original quota at 76 bears in 1988, and it was later increased to 80. The quota was based on estimates of the population size and age specific estimates of survival and recruitment. One estimate suggests that harvest up to 1.5 percent of the adult females was sustainable. Combining this estimate and a 2:1 sex ratio (male:female) of the harvest ratio, 4.5 percent of the total population could be harvested each year.

The Service has monitored the Alaska polar bear harvest since 1980. The Native subsistence harvest from the Southern Beaufort Sea has remained relatively consistent since 1980 and averages 36 bears per year. The combined harvest from Alaska and Canada from the Southern Beaufort Sea appears sustainable and equitable. During the last 5 years (2000–2004), 97 bears were harvested by residents of Barrow, 15 for Kaktovik, 13 for Nuiqsut, 30 for Wainwright, and 2 for Atqasuk. The Native subsistence harvest is the greatest source of mortality related to

human activities, although several bears have been killed during research activities, through euthanasia of sick or injured bears, accidental drownings, or in defense of human life by non-Natives.

*Plan of Cooperation*

As a condition of incidental take authorization, any applicant requesting an LOA is required to present a record of communication that reflects their discussions with the Native Communities most likely affected by the activity. The North Slope native communities involved include Barrow, Nuiqsut, and Kaktovik. Polar bear and Pacific walrus inhabiting the Beaufort Sea represent a small portion, in terms of the number of animals, of the total subsistence harvest of fish and wildlife for the villages of Barrow, Nuiqsut, and Kaktovik. Despite this, harvest of these species is important to Alaska Natives. An important aspect of the LOA process, therefore, is that, prior to issuance of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been coordinated with any affected subsistence community or, as appropriate, with the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. Where relevant, a Plan of Cooperation will describe measures to be taken to mitigate potential conflicts between the proposed activity and subsistence hunting. If requested by Industry or the affected subsistence community, the Service will review these plans and provide guidance. The Service will reject Plans of Cooperation if they do not provide adequate safeguards to ensure that any taking by Industry will not have an unmitigable adverse impact on the availability of polar bears and walrus for taking for subsistence uses.

Included as part of the Plan of Cooperation and the overall State and Federal permitting process of Industry activities, Industry engages the Native communities in numerous informational meetings. During these community meetings, Industry must ascertain if community responses indicate that impact to subsistence uses will occur as a result of activities in the requested LOA. If community concerns suggest that industry activities may have an impact on the subsistence uses of these species, the Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interfering with the availability of polar bear and walrus for subsistence harvest.

*Evaluation*

Subsistence use data regarding polar bears and Pacific walrus supporting Industry Plans of Cooperation, which were gathered to supplement Industry LOA requests in 2003 and 2004 (a total of 39 LOA requests), indicated that there were no unmitigable concerns from the potentially affected communities regarding the availability of these species for subsistence uses based on the specified activity and location of these projects. This information was based on public meeting testimonies, phone conversations, and written statements Industry operators received from the public and community representatives. This suggests that recent Industry activities have had little impact on subsistence uses by Barrow, Nuiqsut, and Kaktovik in the geographic region.

Although all three communities (Barrow, Nuiqsut, and Kaktovik) are located in the geographic area of the rule, Nuiqsut is the community most likely affected by Industry activities due to its close proximity to Industry activities. For this rule, we determined that the total taking of polar bears and walrus will not have an unmitigable adverse impact on the availability of these species for subsistence uses to Nuiqsut residents during the duration of the regulation. We base this conclusion on: The results of coastal aerial surveys conducted within the area during the past 3 years; direct observations of polar bears occurring on Cross Island during Nuiqsut's annual fall bowhead whaling efforts; and anecdotal reports and recent sightings of polar bears by Nuiqsut residents. In addition, we have received no evidence or reports that bears are being deflected (*i.e.*, altering habitat use patterns by avoiding certain areas) or being impacted in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use, and we do not expect any change in the impact of future activities during the regulatory period.

Barrow and Kaktovik are expected to be affected to a lesser degree by oil and gas activities than Nuiqsut, due to their distance from known Industry activities during the 5-year period of the regulations. Through aerial surveys, direct observations, and personal communication with hunters, it appears that subsistence opportunities for bears and walrus have not been impacted by Industry and we do not anticipate any change from the impact of future activities during the regulatory period.

Industry activity locations will change during the 5-year regulatory period and community concerns regarding the effect on subsistence uses by Industry may arise due to these potential changes in activity location. Industry Plans of Cooperation will need to remain proactive in order to address potential impacts on the subsistence uses by affected communities. Open communication through venues such as public meetings, which allow communities to express feedback prior to the initiation of operations, is necessary. If community subsistence use concerns arise from new activities, appropriate mitigation measures are available and will be applied, such as a cessation of certain activities at certain locations and during certain times of the year, *i.e.*, hunting seasons. Hence, we find that any take will not have an unmitigable adverse impact on the availability of polar bears or walrus for subsistence uses by residents of the affected communities.

**Potential Effects of Oil and Gas Industry Activities—Noise, Obstructions, and Encounters—on Pacific Walrus and Polar Bears and Their Prey Species**

Individual walrus and polar bears can be affected by Industry activities in numerous ways. These include: (1) Noise disturbance; (2) physical obstructions; (3) human encounters; and (4) effects on prey.

*Pacific Walrus*

Walrus are not present in the region of activity during the ice-covered season and occur infrequently in the region during the open-water season. Certain activities, described below, associated with oil and gas activities during the open-water season can potentially disturb walrus. Despite the potential for disturbance, there is no indication that walrus have been injured during an encounter by industry activities on the North Slope, and there has been no evidence of lethal takes to date.

1. Noise Disturbance

Industry activities that generate noise include air and vessel traffic, seismic surveys, ice breakers, supply ships, and drilling. Noise may disturb or displace Pacific walrus by preventing sufficient rest, increasing stress, increasing energy expenditure, interfering with feeding, masking communication, or impairing thermoregulation of calves that spend too much time in the water. Any impact of Industry noise on walrus is likely to be limited to a few individuals rather than the population due to their geographic range and seasonal

distribution within the geographic region. For example, Pacific walrus generally inhabit the pack ice of the Bering Sea and do not normally range into the Beaufort Sea, although individuals and small groups are occasionally observed. In addition, the winter range of the Pacific walrus is well beyond the geographic area covered by these regulations (as defined above).

Reactions of marine mammals to noise sources, particularly mobile sources such as marine vessels, vary. Reactions depend on the individuals' prior exposure to the disturbance source and their need or desire to be in the particular habitat or area where they are exposed to the noise and visual presence of the disturbance sources. Walrus are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of walrus. The response of walrus to sound sources may be either avoidance or tolerance.

A. Stationary Sources

Currently, Endicott, the BP's Saltwater Treatment Plant (located on the West Dock Causeway), and Northstar, are the only offshore facilities that could produce noise that has the potential to disturb walrus. Walrus are rarely in the vicinity of these facilities, although three walrus have hauled out on Northstar Island since its construction in 2000 and a walrus was observed swimming near the Saltwater Treatment Plant in 2004. In instances where walrus have been seen near these facilities, they have appeared to be attracted to them, possibly as a resting area or haulout.

B. Mobile Sources

Open-water seismic exploration produces underwater sounds, typically with airgun arrays that may be audible numerous kilometers from the source. Such exploration activities could potentially disturb walrus at varying ranges. In addition, source levels are thought to be high enough to cause hearing damage in pinnipeds in proximity to the sound. Therefore, it is possible that walrus within the 190-decibel (dB re 1 μPa) safety radius sound cone of seismic activities (Industry standard) could suffer temporary threshold shift; however, the use of acoustic safety radii and monitoring programs are designed to ensure that marine mammals are not exposed to potentially harmful noise levels. Previous open-water seismic exploration has been conducted in nearshore ice-free areas. This is the area where any future open-water seismic exploration will occur during the duration of this rule. It is highly unlikely that walrus will be present in these areas, and therefore, it is not expected that seismic exploration would disturb walrus.

C. Vessel Traffic

Walrus react variably to noise from vessel traffic; however, it appears that low-frequency diesel engines cause less of a disturbance than high-frequency outboard engines. In addition, walrus densities within their normal distribution are highest along the edge of the pack ice, and Industry vessel traffic typically avoids these areas. The reaction of walrus to vessel traffic is highly dependent on distance, vessel speed, as well as previous exposure to hunting. Walrus in the water appear to be less readily disturbed by vessels than walrus hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open-water and avoid large ice floes or land where walrus are likely to be found.

When walrus are present, underwater noise from vessel traffic in the Beaufort Sea may ''mask'' ordinary communication between individuals by preventing them from locating one another. It may also prevent walrus from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea ice cover alter northern shipping lanes.

D. Aircraft Traffic

Aircraft overflights may disturb walrus. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walrus tend to be more sensitive to aircraft disturbance. Although the intensity of the reaction to noise is variable, walrus are probably most susceptible to disturbance by fast-moving aircraft. In 2002, a walrus hauled out near the SDC on the McCovey prospect was disturbed when a helicopter landed on the SDC. However, most aircraft traffic is in nearshore areas, where there are typically few to no walrus.

2. Physical Obstructions

Based on known walrus distribution and the very low numbers found in the Beaufort Sea near Prudhoe Bay, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar Island or causeway-linked Endicott, or vessel traffic. There is no indication that the few walrus that used Northstar Island as a haulout in 2001 were displaced from their movements. Vessel traffic could temporarily interrupt the movement of walrus, or displace some animals when vessels pass through an area. This displacement would probably have minimal or no effect on animals and would last no more than a few hours.

3. Human Encounters

Human encounters with walrus could occur in the course of Industry activities, although such encounters would be rare due to the limited distribution of Pacific walrus in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas.

4. Effect on Prey Species

Walrus feed primarily on immobile benthic invertebrates. The effect of Industry activities on benthic invertebrates most likely would be from oil discharged into the environment. Oil has the potential to impact walrus prey species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Relatively few walrus have been present in the central Beaufort Sea. It is important to note the although the status of walrus prey species within the Beaufort Sea are poorly known, it is unclear to what extent, if any, prey abundance plays in limiting the use of the Beaufort Sea by walrus. Further studies of the Beaufort Sea benthic community as it relates to walrus is warranted. The low likelihood of an oil spill large enough to effect prey populations (see analysis in the section titled Potential Impacts of Waste Products Discharge and Oil Spills on Pacific Walrus and Polar Bears—Pacific Walrus) combined with the fact that walrus are not present in the region during the ice-covered season and occur only infrequently during the open-water

season indicates that Industry activities will have limited indirect effects on walrus through effects on prey species.

*Evaluation*

Industry noise disturbance and associated vessel traffic may have a more pronounced impact than physical obstructions or human encounters on walrus in the Beaufort Sea. However, due to the limited number of walrus inhabiting the geographic region during the open-water season and lack of walrus during the ice-covered season, the Service expects minimal impact to individual walrus and that any take will have a negligible impact on this stock during the 5-year regulatory period.

*Polar Bear*

Polar bears are present in the region of activity and, therefore, oil and gas activities could impact polar bears in various ways during both open-water and ice-covered seasons. Impacts from: (1) Noise disturbance; (2) physical obstructions; (3) human encounters; and (4) effects on prey species are described below.

1. Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in takes of polar bears. During the ice-covered season, denning female bears, as well as mobile, non-denning bears, could be exposed to oil and gas activities and potentially affected in different ways. The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include: Construction, maintenance, repair, and remediation activities; operations at production facilities; flaring excess gas; and drilling operations from either onshore or offshore facilities. Mobile sources include: Vessel and aircraft traffic; open-water seismic exploration; winter vibroseis programs; geotechnical surveys; ice road construction and associated vehicle traffic, including tracked vehicles and snowmobiles; drilling; dredging; and ice-breaking vessels.

A. Stationary Sources

All production facilities on the North Slope in the area to be covered by this rulemaking are currently located within the landfast ice zone. Typically, most polar bears occur in the active ice zone, far offshore, hunting throughout the year; although some bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, usually during the fall season when fall storms and ocean currents may deposit ice-bound bears on land, bears may remain along the coast or on barrier islands for several weeks until the ice returns.

Noise produced by stationary Industry activities could elicit several different responses in polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, which could result in unintentional harassment, lethal take, or intentional hazing (under separate authorization) of the bear.

During the ice-covered season, noise and vibration from Industry facilities may deter females from denning in the surrounding area, even though polar bears have been known to den in close proximity to industrial activities. In 1991, two maternity dens were located on the south shore of a barrier island within 2.8 km (1.7 mi) of a production facility. Recently, industrial activities were initiated while two polar bears denned near those activities. During the ice-covered seasons of 2000–2001 and 2001–2002, dens known to be active were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi) of remediation activities on Flaxman Island without any observed impact to the polar bears.

In contrast, information exists indicating that polar bears within the geographic area of these regulations may have abandoned dens in the past due to exposure to human disturbance. For example, in January 1985, a female polar bear may have abandoned her den due to rolligon traffic, which occurred between 250 and 500 meters from the den site. Researcher disturbance created by camp proximity and associated noise, which occurred during a den emergence study in 2002 on the North Slope, may have caused a female bear and her cub(s) to abandon their den and move to the ice sooner than normal. The female was observed later without the cub(s). While such events may have occurred, information indicates they have been infrequent and isolated, and will continue to be so in the future.

In addition, polar bears exposed to routine industrial noises may acclimate to those noises and show less vigilance than bears not exposed to such stimuli. This implication came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8). Researchers assessed vigilant behavior with two potential measures of disturbance: proportion of time scanning their surroundings and the frequency of observable vigilant behaviors. Bears exposed to industrial activity spent less time scanning their surroundings than bears in undisturbed areas and engaged in vigilant behavior significantly less often.

B. Mobile Sources

In the Southern Beaufort Sea, during the open-water season, polar bears spend the majority of their lives on the pack ice, which limits the chances of impacts on polar bears from Industry activities. Although polar bears have been documented in open-water, miles from the ice edge or ice floes, this has been a relatively rare occurrence. In the open-water season, Industry activities are generally limited to vessel-based exploration activities, such as ocean-bottom cable (OBC) and shallow hazards surveys. These activities avoid ice floes and the multi-year ice edge; however, they may contact bears in open water and the effects of such encounters will be short-term behavior disturbance.

C. Vessel Traffic

During the open-water season, most polar bears remain offshore in the pack ice and are not typically present in the area of vessel traffic. Barges and vessels associated with Industry activities travel in open-water and avoid large ice floes. If there is any encounter between a vessel and a bear, it would most likely result in short-term behavioral disturbance only.

D. Aircraft Traffic

Routine aircraft traffic should have little to no effect on polar bears; however, extensive or repeated overflights of fixed-wing aircraft or helicopters could disturb polar bears. Behavioral reactions of non-denning polar bears should be limited to short-term changes in behavior and would have no long-term impact on individuals and no impacts on the polar bear population. In contrast, denning bears may abandon or depart their dens early in response to repeated noise produced by extensive aircraft overflights. Mitigation measures, such as minimum flight elevations over polar bears or areas of concern and flight restrictions around known polar bear dens, will be required, as appropriate, to reduce the likelihood that bears are disturbed by aircraft.

E. Seismic Exploration

Although polar bears are typically associated with the pack ice during summer and fall, open-water seismic exploration activities can encounter polar bears in the central Beaufort Sea in late summer or fall. It is unlikely that seismic exploration activities or other geophysical surveys during the open-water season would result in more than temporary behavioral disturbance to polar bears. Polar bears normally swim with their heads above the surface, where underwater noises are weak or undetectable.

Noise and vibrations produced by oil and gas activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from seismic activities. As stated earlier, disturbances to denning females, either on land or on ice are of particular concern.

As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and delineated denning habitat.

2. Physical Obstructions

There is little chance that Industry facilities would act as physical barriers to movements of polar bears. Most facilities are located onshore where polar bears are only occasionally found. The offshore and coastal facilities are most likely to be approached by polar bears. The Endicott Causeway and West Dock Causeway and facilities have the greatest potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. Yet, because polar bears appear to have little or no fear of man-made structures and can easily climb and cross gravel roads and causeways, bears have frequently been observed crossing existing roads and causeways in the Prudhoe Bay oilfields. Offshore production facilities, such as Northstar, may be approached by polar bears, but due to their layout (i.e., continuous sheet pile walls around the perimeter) and monitoring plan the bears may not gain access to the facility itself. This situation may present a small-scale, local obstruction to the bears' movement, but also minimizes the likelihood of human-bear encounters.

3. Human Encounters

Human encounters can be dangerous for both the polar bear and the human. Whenever humans work in the habitat of the animal, there is a chance of an encounter, even though, historically, such encounters have been uncommon in association with Industry.

Although bears may be found along the coast during open-water periods, most of the Southern Beaufort Sea bear stock inhabits the multi-year pack ice during this time of year. Encounters are more likely to occur during fall and winter periods when greater numbers of the bears are found in the coastal environment searching for food and possibly den sites later in the season. Potentially dangerous encounters are most likely to occur at gravel islands or on-ice exploratory sites. These sites are at ice level and are easily accessible by polar bears. Industry has developed and uses devices to aid in detecting polar bears, including bear monitors and motion detection systems. Industry takes steps to actively prevent bears from accessing facilities using safety gates and fences.

Offshore production islands, such as the Northstar production facility, could potentially attract polar bears. Indeed, in 2004, Northstar accounted for 41 percent of all polar bear observations Industry-wide. They reported 37 sightings in which 54 polar bears were observed. Most bears were observed as passing through the area. Such offshore facilities could potentially increase the rate of human-bear encounters, which could result in increased incident of harassment of bears. Employee training and company policies reduce and mitigate such encounters.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with Industry activities. In the past, such interactions have been mitigated through conditions on the LOA, which require the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site.

Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. The result of these polar bear interaction plans and training allows personnel on site to detect bears and respond safely and appropriately. Often, personnel are instructed to leave an area where bears are seen. Many times polar bears are monitored until they move out of the area. Sometimes, this response involves deterring the bear from the site. If it is not possible to leave, in most cases bears can be displaced by using pyrotechnics (e.g., cracker shells) or other forms of deterrents (e.g., the vehicle itself, vehicle horn, vehicle siren, vehicle lights, spot lights, etc.). The purpose of these plans and training is to eliminate the potential for injury to personnel or lethal take of bears in defense of human life. Since the regulations went into effect in 1993, there has been no known instance of a bear being killed or Industry personnel being injured by a bear as a result of Industry activities. The mitigation measures associated with these regulations have been proven to minimize human-bear interactions and will continue to be requirements of future LOAs, as appropriate.

There is the potential for human activity to contact polar bear dens as well. Known polar bear dens, found as a result of radio-collared, pregnant females or verification by scent-trained dogs, around the oilfield are monitored by the Service. These are only a small percentage of the total active polar bear den locations for the Southern Beaufort Sea stock in any given year. Industry routinely coordinates with the Service to determine the location of Industry's activities relative to known dens and denning habitat. General LOA provisions require Industry operations to avoid known polar bear dens by 1 mile.

There is the possibility that an unknown den may be encountered during Industry activities as well. In the past five years (2002–2006), four previously unknown maternal polar bears dens have been encountered by Industry during the course of project activities. Once a previously unknown den is identified by Industry, the Service requires the den be reported. Communication between Industry and the Service and the implementation of mitigation measures, such as the 1-mile exclusion area around the now known den, will ensure that disturbance is minimized.

4. Effect on Prey Species

Ringed seals are the primary prey of polar bears and inhabit the nearshore waters where offshore Industry activities occur. Industry will mainly

have an effect on seals through the potential for contamination (oil spills) or industrial noise disturbance. Some effects of contamination from oil discharges for seals are described in the following section, ''Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walrus and Polar Bears,'' under the ''Pacific Walrus'' subsection.

Studies have shown that seals can be displaced from certain areas, such as pupping lairs or haulouts, and abandon breathing holes near Industry activity. However, these disturbances appear to have minor effects and are short term. In one study, no slope-wide effects of Industry activity on ringed seals could be measured.

*Evaluation*

The Service anticipates that potential impacts of Industry noise, physical obstructions, and human encounters on polar bears would be limited to short-term changes in behavior and should have no long-term impact on individuals and no impacts on the polar bear population.

Potential impacts will be mitigated through various requirements stipulated within LOAs. Mitigation measures that will be required for all projects include a polar bear and/or walrus interaction plan, and a record of communication with affected villages that may serve as the precursor to a Plan of Cooperation with the village to mitigate effects of the project on subsistence activities. Mitigation measures that may be used on a case-by-case basis include the use of trained marine mammal monitors associated with marine activities, the use of den habitat maps developed by USGS, the use of FLIR or polar bear scent-trained dogs to determine the presence or absence of dens, timing of the activity to limit disturbance around dens, the 1-mile buffer surrounding known dens, and suggested work actions around known dens. The Service implements certain mitigation measures based on need and effectiveness for specific activities based largely on timing and location. For example, the Service will implement different mitigation measures for a 2-month long exploration project, 20 miles inland from the coast, than for an annual nearshore development project in shallow waters. Based on past monitoring information, bears are more prevalent in the coastal areas than 20 miles inland. Therefore, the monitoring and mitigation measures that the Service deems must be implemented to limit the disturbance to bears and to limit human/bear interactions may differ.

In the case of Industry activities occurring around a known bear den, a standard condition of LOAs requires Industry projects to have developed a polar bear interaction plan and requires Industry to maintain a 1-mile buffer between industry activities and known denning sites to limit disturbance of the bear. In addition, we may require Industry to avoid working in known denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens through the use of remote sensing techniques, such as maps of denning habitat along the Beaufort Sea coast, and FLIR imagery.

FLIR imagery, as a mitigation tool, is used in cooperation with coastal polar bear denning habitat maps. Industry activity areas, such as coastal ice roads, are compared to polar bear denning habitat and transects are then created to survey the specific habitat within the Industry area. FLIR heat signatures within a standardized den protocol are noted and further mitigation measures are placed around these locations. This can include the 1-mile buffer or increased monitoring of the site. FLIR surveys are more effective at detecting polar bear dens than visual observations. The effectiveness increases when FLIR surveys are combined with site-specific, scent-trained dog surveys.

Based on these evaluations, the use of FLIR technology, coupled with trained dogs, to locate or verify occupied polar bear dens, is a viable technique that minimizes impacts of oil and gas industry activities on denning polar bears. These techniques will continue to be required as conditions of LOAs when appropriate.

In addition, Industry has sponsored cooperative research evaluating transmission of noise and vibration through the ground, snow, ice, and air and the received levels of noise and vibration in polar bear dens. This information has been useful to refine site-specific mitigation measures. Using current mitigation measures, Industry activities have had no known effects on the polar bear population during the period of previous regulations. We anticipate that, with continued mitigation measures, the impacts to denning and non-denning polar bears will be at the same low level as in previous regulations.

Monitoring data suggests that polar bear encounters in the oil fields can fluctuate. Polar bear observations by Industry have increased between 2000 and 2004 (34 observations in 2000 and 89 bear observations in 2004). These include bears observed from a distance and passively moving through the area to aggressive bears that pose a threat to personnel and are hazed for their safety and the safety of Industry personnel. This increase in observations is believed to be due to an increased number of companies requesting incidental take authorizations and an increase in the number of people monitoring bear activities around the facilities. Although bear observations appear to have increased, human-bear encounters remain uncommon events. We anticipate that human-bear encounters during the 5-year period of these regulations will remain as uncommon events.

**Potential Impacts of Waste Product Discharge and Oil Spills on Pacific Walrus and Polar Bears**

Individual walrus and polar bears can potentially be affected by Industry activities through waste product discharge and oil spills. These potential impacts are described below in the following sections.

Spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oil fields. Many spills are small (< 50 barrels) by Industry standards. Larger spills (≥ 500 barrels) account for much of the annual volume. Five large spills occurred between 1985 and 1998 on the North Slope. These spills were terrestrial in nature and pose minimal harm to walrus and polar bears. To date, no major offshore spills have occurred on the North Slope.

Spills of crude oil and petroleum products associated with onshore production facilities during ice-covered and open-water seasons are usually minor spills. They can occur during normal operations (e.g., transfer of fuel, handling of lubricants and liquid products, and general maintenance of equipment).

Larger spills are generally production-related and could occur at any production facility or pipeline connecting wells to the Trans-Alaska Pipeline System. In addition to onshore sites, this could include offshore facilities, such as causeway-linked Endicott or the sub-sea pipeline-linked

Northstar Island. The trajectories of large offshore spills from Northstar and the proposed Liberty facilities have been modeled to examine potential impacts to polar bears and will be discussed in a later section.

For this rule, oil spills in the marine environment that can accumulate at the ice edge, in ice leads, and similar areas of importance to polar bears and walrus are of particular concern. Likewise, oil spills from offshore production activities, such as Northstar, are of concern because as additional offshore oil exploration and production, such as the Oooguruk and Nikaitchuq projects, occurs, the potential for large spills in the marine environment increases. The Northstar Project transports crude oil from a gravel island in the Beaufort Sea to shore via a 5.9-mile buried sub-sea pipeline. The pipeline is buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Production of Northstar began in 2001, and currently an estimated 70,000 barrels of oil pass through the pipeline daily. However, spill response and clean-up of an oil spill, especially in broken-ice conditions is still problematic where it is unknown if oil could be effectively cleaned up.

*Pacific Walrus*

As stated earlier, the Beaufort Sea is not within the primary range for the Pacific walrus; therefore, the probability of walrus encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walrus unless oil moved into the offshore environment. In the event of a spill during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walrus. During the ice-covered season, spilled oil would be incorporated into the thickening sea ice, contained, and pumped into collection tanks. During spring melt, oil would be collected by spill response activities, but could eventually contact a limited number of walrus.

Little is known about the effects of oil specifically on walrus; however, hypothetically, walrus may react to oil much like other pinnipeds, such as seals. Adult walrus may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to their gregarious nature, an oil spill would most likely affect multiple individuals in the area.

Walrus calves are most likely to suffer the effects of oil contamination. Female walrus with calves are very attentive, and the calf will stay close to its mother at all times, including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell, and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the death of both animals.

Walrus have thick skin and blubber layers for insulation and very little hair. Thus, they exhibit no grooming behavior, which lessens their chance of ingesting oil. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of Pacific walrus to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walrus may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis, a condition which is reversible.

Like other pinnipeds, walrus are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage. Walrus may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walrus were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walrus are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. In addition, because walrus feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walrus to find other food resources or move to nontraditional areas.

*Evaluation*

Waste product or oil spills will have detrimental impacts on individual Pacific walrus if they come in contact with a large volume of oil from a large spill. However, the limited number of walrus in the Beaufort Sea and the potential for a large oil spill, which is discussed in the following Risk Assessment Analysis, limit potential impacts to walrus to only certain events (a large oil spill) and then only to a limited number of individuals. Oil discharged into the environment has the potential to impact walrus prey species in a variety of ways including (but not limited to) mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates.

There are few walrus in the area. In the unlikely event there is an oil spill and walrus in the same area, mitigation measures would minimize any effect. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately.

*Polar Bear*

The possibility of oil and waste product spills from Industry activities and the subsequent impacts on polar bears are a major concern. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although the majority of the Southern Beaufort Sea polar bear population spends a large amount of their time offshore on the pack ice, some bears are likely to encounter oil from a spill regardless of the season and location.

Small spills of oil or waste products throughout the year by Industry activities could potentially impact small

numbers of bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, approximately 9.3 km (5 nautical miles) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye; however, the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. In experimental oiling, many effects did not become evident until several weeks after exposure to oil.

Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value of the pelt in polar bears. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Furthermore, an oiled bear would ingest oil because it would groom in order to restore the insulation value of the oiled fur. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperatures.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment, and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces, but some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on a polar bear, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption; polar bears may exhibit these symptoms if they ingest oil.

Polar bears swimming in, or walking adjacent to, an oil spill could inhale petroleum vapors. Vapor inhalation by polar bears could result in damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure.

Oil may also affect food sources of polar bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could, therefore, temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Possible impacts from the loss of a food source could reduce recruitment or survival. Also, seals that die as a result of an oil spill could be scavenged by polar bears. This would increase exposure of the bears to hydrocarbons and could result in lethal impact or reduced survival to individual bears.

*Evaluation*

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the development of offshore production facilities and pipelines has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, it is not certain what the outcome of such a spill would be if one were to occur. In a large spill (e.g., 5,900 barrels: the size of a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline), oil would be influenced by seasonal weather and sea conditions. These would include temperature, winds, and, for offshore events, wave action and currents. Weather and sea conditions would also affect the type of equipment needed for spill response and how effective spill cleanup would be. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions. In addition, based on clean-up activities with the Exxon Valdez oil spill, spill response may be largely unsuccessful in open water conditions. These factors, in turn, would dictate how large spills impact polar bear and walrus habitat and numbers.

The major concern regarding large oil spills is the impact a spill would have on the survival and recruitment of the Southern Beaufort Sea polar bear population. Currently, this bear population is approximately 2,200 bears. In addition, the maximum sustainable subsistence harvest is 80 bears for this population (divided between Canada and Alaska). The population may be able to sustain the additional mortality caused by a large oil spill of a small number of bears, such as 1 to 5 individuals; however, the additive effect of a worst-case scenario, such as numerous bear deaths (i.e., in the range of 20 to 30) due to direct or indirect effects from a large oil spill may reduce population rates of recruitment or survival. Indirect effects may occur through a local reduction in seal productivity or scavenging of oiled seal carcasses coupled with the subsistence harvest and other potential impacts, both natural and human-induced. The removal of a large number of bears from the population would exceed sustainable levels, potentially causing a decline in the bear population and affecting bear productivity and subsistence use.

Potential impacts of Industry waste products and oil spills suggest that individual bears could be impacted by the disturbances. Depending on the amount of oil or wastes involved, the timing and location of a spill, impacts could be short-term, chronic, or lethal. In order for bear population reproduction or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

**Oil Spill Risk Assessment Analysis**

Although these regulations do not authorize lethal take, we analyze the probability of lethal take of a polar bear by an oil spill through our oil spill risk assessment analysis. Currently, there are two offshore Industry facilities producing oil, Endicott and Northstar. Oil spilled from the sub-sea pipeline of an offshore facility, such as Northstar, is a unique scenario that has been considered in previous regulations. Northstar transports crude oil from a gravel island in the Beaufort Sea to shore via a sub-sea pipeline, which is buried in a trench deep enough to theoretically remove the risk of damage from ice gouging and strudel scour.

Northstar began producing oil in 2001. Endicott is connected by a causeway to the mainland and began producing oil in 1986.

Other offshore sites are in various states of planning and could be developed to produce oil from the nearshore environments in the future. These include the Oooguruk, Nikaitchuq, and Liberty developments. Although Liberty has completed a draft EIS and has been included in the Risk Assessment Analysis for these regulations, none of the potential offshore production sites have finalized their facilities design and completed their environmental impact documentation. Without final information on facilities design and environmental impacts, it is not possible to quantify the likelihood of an oil spill and the likely effects of such a spill. Therefore, we have modeled oil spill trajectories from the Liberty and Northstar sites for the purposes of the risk assessment. We believe that even though the risk assessment does not specifically model spills from the Oooguruk or Nikaitchuq sites, the results for Oooguruk and Nikaitchuq would be within the range of expected impacts and that the analysis for Northstar and Liberty adequately reflects the potential impacts from an oil spill at either of these locations.

It is necessary to understand how offshore sites could affect marine mammals if a spill were to occur. A large-volume amount of movement and distribution data are available to accurately calculate polar bear densities within the area, and we have conducted a thorough analysis. Because of the extremely minimal probability of walrus encountering oil spills, they were not considered in this analysis.

Polar bears would be at risk of adverse impacts if there is an oil spill in the Beaufort Sea. Limited data from a Canadian study suggest that polar bears experimentally oiled with crude oil will most likely die. This finding is consistent with what is known of other marine mammals that rely on their fur for insulation. The Northstar FEIS concluded that mortality of up to 30 polar bears could occur as the result of an oil spill greater than 1,000 barrels. U.S. Geological Survey (USGS) researchers calculated that the number of polar bears potentially oiled at the Liberty prospect was 0 to 25 polar bears for open-water and 0 to 61 bears in the broken-ice period. However, neither estimate for the facilities accounts for the likelihood of spills seasonally during the period that the regulations are in effect.

Two independent lines of evidence were used to assess the potential effects of offshore production, one largely anecdotal and the other quantitative. The anecdotal information is based on Industry site locations and Service studies investigating polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea. This information suggests that polar bear aggregations may occur for brief periods in the fall. The presence and duration of these aggregations are likely influenced by the presence or absence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales from subsistence hunts at specific locations. In order for significant impacts on polar bears to occur, an oil spill would have to contact an aggregation of polar bears. We believe the probability of all these events occurring simultaneously is low.

The quantitative assessment of oil spill risk for the current request of incidental take regulations used the method employed in the previous oil spill risk assessment, but with current data. It is based on a risk assessment that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a current polar bear distribution model based on location of satellite-collared females during September and October. Although Liberty was originally designed as an offshore production island, it is currently being developed as an onshore production facility which will drill directionally into the oil prospect. Nevertheless, the Service has included Liberty for this risk assessment as an offshore production island in order to incorporate multiple offshore sample points to analyze.

*Methodology*

The first step in the risk assessment analysis was to calculate oil spill probabilities at the Northstar and Liberty sites for open-water (September) and broken-ice (October) seasons. We considered spill probabilities for the drilling platform and the sub-sea pipeline, since this is where spills are most likely to occur. Using production estimates from the Northstar FEIS and the Liberty DEIS, we estimated the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment during the 5-year period covered by the regulations.

Two spill probabilities were calculated for Liberty and Northstar. Spill rates used to estimate the chance of an oil spill occurring at Liberty and Northstar were derived from historical data collected in the Liberty DEIS and Northstar FEIS. Spill probabilities for the pipelines were derived from spill data on European onshore pipelines and estuary crossings (Conservation of Clean Air and Water in Europe [CONCAWE]) and oil spills in the Gulf of Mexico and the Pacific outer continental shelf.

Annual spill probabilities were further divided to express various types of ice conditions (freeze-up, solid ice, break-up, open water) throughout the year during the life of the regulations.

The second step in the risk assessment was to calculate the number of polar bears that could be oiled from a spill. This involved modeling the probabilistic distribution of bears from current data that could be in the area and overlapping polar bear distributions with oil spill trajectories.

Trajectories previously calculated for Northstar and Liberty sites were used. The trajectories were provided by the MMS. The MMS estimated probable sizes of oil spills from the transportation pipeline and the island as well. These spill sizes ranged from a minimum of 125 barrels to a catastrophic release event of 5,912 barrels. Hence, the size of the modeled spill was set at the worst-case scenario of 5,912 barrels, simulating rupture and drainage of the entire sub-sea pipeline. Each spill was modeled by tracking the location of 500 ''spillets.'' Spillets were driven by wind and currents, and their movements were stopped by the presence of sea ice. Open-water and broken-ice scenarios were each modeled with 360 to 500 simulations. A solid-ice scenario was also modeled in which oil was trapped beneath the ice and did not spread. In this later event, we found it unlikely that polar bears would contact oil, and removed this scenario from further analysis. Each simulation was run for at least 10 days with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system.

The second component incorporated up-to-date polar bear densities overlapped with the oil spill trajectories. In 2004, USGS completed analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information was derived from radio and satellite relocations of collared adult females. Density estimates from 15,308 satellite locations of 194 polar bears collared between 1985 and 2003 was used to estimate the distribution of polar bears in the Beaufort Sea. Using a technique called ''kernel smoothing,'' they created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1-

$km^2$ grid cell. Standard errors of bear numbers per cell were estimated with resampling procedures. Each of the simulated oil spills was overlaid with the polar bear distribution grid. Oil spill footprints for September and October, the timeframe that hypothesized effects of an oil-spill would be greatest, were estimated using real wind and current data collected between 1980 and 1996. The ARC/Info software was used to calculate overlap, numbers of bears oiled between oil-spill footprints, and polar bear grid-cell values. If a spillet passed through a grid cell, the bears in that cell were considered oiled by the spill.

Finally, the likelihood of occurrence for the number of bears oiled during the duration of the 5-year incidental take regulations was estimated. This was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year, and summing these probabilities.

*Results*

Oil spill probabilities for Northstar and Liberty are presented in Table 1.

TABLE 1.—NORTHSTAR AND LIBERTY OIL SPILL PROBABILITIES BASED ON GULF OF MEXICO, PACIFIC OUTER CONTINENTAL SHELF, AND CONCAWE INFORMATION

| Ice conditions | Proportion of conditions for 5-yr period | Probability of spill (Ps) | Probability of Spill (Ps) CONCAWE | Probability of Spill (Ps) | Probability of Spill (Ps) CONCAWE |
|---|---|---|---|---|---|
| | | NORTHSTAR | | LIBERTY | |
| Freeze-up (1 mo/yr) | 0.083 | 0.01377 | 0.00406 | 0.00435 | 0.00157 |
| Solid ice (7 mo/yr) | 0.583 | 0.09641 | 0.02841 | 0.03047 | 0.01102 |
| Break-up (1 mo/yr) | 0.083 | 0.01377 | 0.00406 | 0.00435 | 0.00157 |
| Open water (3 mo/yr) | 0.250 | 0.04132 | 0.01218 | 0.01306 | 0.00472 |
| Total | 1.000 | 0.1653 | 0.0487 | 0.0522 | 0.0189 |

The number of bears potentially oiled by a simulated 5,912-barrel spill ranged from 0 to 27 polar bears during the September open-water conditions and from 0 to 74 polar bears during the October mixed-ice conditions for Northstar, and from 0 to 23 polar bears during the September open-water conditions and from 0 to 55 polar bears during the October mixed-ice conditions for Liberty. Median number of bears oiled by the simulated 5,912-barrel spill from the Northstar site in September and October were 3 and 11 bears, respectively; equivalent values for the Liberty site were 1 and 3 bears, respectively. Variation among oil spill scenarios was the result of differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. In October, 75 percent of trajectories from the 5,912-barrel spill at Northstar affected 20 or fewer polar bears, while 75 percent of the trajectories oiled 9 or fewer bears when the October spill occurred at our Liberty simulation site.

When calculating the probability that a spill would oil five or more bears during the fall period, we found that oil spills and trajectories were more likely to affect small numbers of bears (five bears) than larger numbers of bears. Thus, for Northstar, the probability of a spill that oils (resulting in mortality) 5 or more bears is 1.0–3.4 percent; for 10 or more bears is 0.7–2.3 percent; and for 20 or more bears is 0.2–0.8 percent. For Liberty, the probability of a spill that will cause a mortality of 5 or more bears is 0.3–7.4 percent; for 10 or more bears is 0.1–0.4 percent; and for 20 or more bears is 0.1–0.2 percent.

*Discussion*

Northstar Island is nearer the active ice flow zone than Liberty, and it is not sheltered from deep water by barrier islands. These characteristics contribute to more polar bears being distributed in close proximity to the island and to oil being dispersed more quickly and further into surrounding areas. By comparison, oil spill trajectories from Liberty were more erratic in the areas covered and the numbers of bears impacted. Hence, larger numbers of bears were consistently exposed to oil trajectories by Northstar simulations than those modeled for Liberty. This difference was especially pronounced in October spill scenarios. In October, the land-fast ice, inside the shelter of the islands and surrounding Liberty, dramatically restricted the extent of most simulated oil spills in comparison to Northstar, which lies outside the barrier islands and in deeper water. At both locations, simulated oil-spill trajectories affected small numbers of bears far more often than they affected larger numbers of bears. At Liberty, the number of bears affected declined more quickly than they did at Northstar. The proposed Liberty Island production site presents less risk to polar bears than the existing facility at Northstar Island.

The greatest source of uncertainty in the calculations was the probability of an oil spill occurring. The oil spill probability estimates for Northstar and Liberty were calculated using data for sub-sea pipelines outside of Alaska and outside of the Arctic, which likely do not reflect conditions that would be routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour in the nearshore environment. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, oil spill probabilities as presented in the Northstar FEIS incorporate unquantified levels of uncertainty in their estimate. If the probability of a spill were twice the estimated value, the probability of a spill that would cause a mortality of five or more bears would remain low (approximately 6 percent for Northstar and 1.5 percent for Liberty).

The spill analysis was dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. For example, these included variation in spill probabilities during the year (underestimate, overestimate), the length of time the oil spill trajectory model was run (longer time periods would overestimate the risk), whether or not containment occurred during the trajectory model (containment could underestimate the risk), lack of effective hazing to deter wildlife during the model runs (overestimate the risk), contact with a spillet constituting mortality (overestimate the risk), and an even distribution of polar bears. Polar bear aggregations were not included in the various model runs. We determined that the assumptions that will overestimate and underestimate mortalities were generally in balance. Fall coastal aerial surveys have shown

that the Northstar and Liberty sites are not associated with large aggregations of bears in the immediate areas, although aggregations do occur consistently during this time at Cross Island (approximately 17 miles northeast from Northstar and 17 miles northwest of Liberty, respectively) and Barter Island and may occur wherever whale carcasses are present.

*Conclusion*

We conclude that if an offshore oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur; however, in balancing the level of impact with the probability of occurrence, we conclude that lethal take from an oil spill within the 5-year regulatory period is unlikely. Due to the small volume of oil associated with onshore spills, the various response systems identified in Industry oil spill contingency plans to clean up spills, and mitigation measures used to deter bears away from the affected area for their safety, onshore spills would have little impact on the polar bear population as well.

**Documented Impacts of the Oil and Gas Industry on Pacific Walrus and Polar Bears**

*Pacific Walrus*

During the history of the incidental take regulations, the actual impacts from Industry activities on Pacific walrus, documented through monitoring, were minimal. From 1994 to 2004, Industry recorded nine sightings, involving a total of ten Pacific walrus, during the open-water season. In most cases, walrus appeared undisturbed by human interactions; however, three sightings involved potential disturbance to the walrus. Two of three sightings involved walrus hauling out on the armor of Northstar Island and one sighting occurred at the SDC on the McCovey prospect, where the walrus reacted to helicopter noise. The walrus were observed during exploration (three sightings), development (two sightings), and production (four sightings) activities. There is no evidence that there were any physical effects or impacts to these individual walrus based on the interaction with Industry. We know of no other interactions that occurred between walrus and Industry during the duration of the incidental take program.

*Polar Bear*

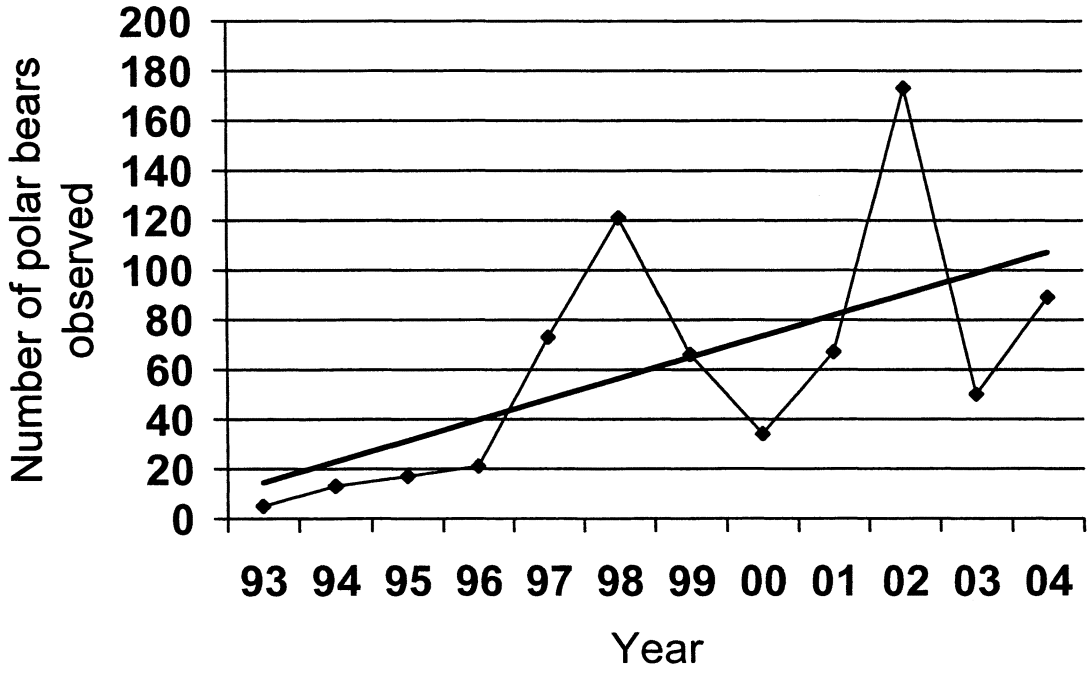
Documented impacts on polar bears by the oil and gas industry during the past 30 years are minimal. Polar bears spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, fall storms deposit bears along the coastline where bears remain until the ice returns. For this reason, polar bears have mainly been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During those periods, the likelihood of interactions between polar bears and Industry activities increases. We have found that the polar bear interaction planning and training requirements set forth in these regulations and required through the LOA process have increased polar bear awareness and minimized these encounters. LOA requirements have also increased our knowledge of polar bear activity in the developed areas.

No lethal take associated with Industry has occurred during the period covered by incidental take regulations. Prior to issuance of regulations, lethal takes by Industry were rare. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was reported to be in defense of human life. In winter 1968–1969, an Industry employee shot and killed a polar bear. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories from 1976 to 1986 due to encounters with Industry. Since the beginning of the incidental take program, which includes measures that minimize impacts to the species, no polar bears have been killed due to encounters associated with current Industry activities on the North Slope. For this reason, Industry has requested that these regulations cover only nonlethal, incidental take.

The majority of actual impacts on polar bears have resulted from direct human-bear encounters. Monitoring efforts by Industry required under previous regulations for the incidental take of polar bears documented various types of interactions between polar bears and Industry. A total of 262 LOAs have been issued for incidental (unintentional) take of polar bears in regard to oil and gas activities between 1993 to 2004: 78 percent were for exploration; 12 percent were for development; and 10 percent were for production activities. A total of 729 polar bear sightings were recorded in monitoring programs during this period. Monitoring programs associated with 21 percent (55 of 262 LOAs) of these activities reported actual sightings of polar bears.

Polar bear observations have generally increased since the inception of the incidental take regulations required observations as part of each activity's monitoring program (Figure 1.) This increase is mainly a result of increased monitoring effort through the years. There was a spike in bear observations in 2002 (173 observations) which was caused, in part, by a fall storm that deposited a higher number of bears on the North Coast of Alaska.

**Figure 1.** Number of polar bears observed per year as a result of monitoring requirements from the Beaufort Sea Incidental Take Program.




More recently, during 2004, the oil and gas industry reported 89 polar bear sightings involving 113 individual bears. Polar bears were more frequently sighted during the months of August to January. Seventy-four sightings were of single bears and 15 sightings consisted of family groups. Offshore oil facilities, Northstar and Endicott, accounted for 63 percent of all polar bear sightings, 42 percent and 21 percent, respectively, documenting Industry activities that occur on or near the Beaufort Sea coast have a greater possibility for encountering polar bears than Industry activities occurring inland. Fifty-nine percent (n=53) of polar bear sightings consisted of observations of polar bears traveling through or resting near the monitored areas without a perceived reaction to human presence. Forty-one percent (n=36) of polar bear sightings involved Level B harassment, where bears were deterred from industrial areas with no injury. We have no indication that these encounters, which alter the behavior and movement of individual bears, have an effect on survival and recruitment in the Southern Beaufort Sea polar bear population.

**Summary of Take Estimate for Pacific Walrus and Polar Bear**

*Pacific Walrus*

Since walrus are typically not found in the region of Industry activity, there is a minimal probability that Industry activities, including offshore drilling operations, seismic, and coastal activities, will adversely affect any walrus. Walrus observed in the region have typically been lone individuals or small groups, further reducing the number of potential takes expected. There is a possibility of some nonlethal takes occurring at a very low level during the five-year rule from noise, obstructions, and encounters. Furthermore, the majority of walrus hunted by Barrow residents were harvested west of Point Barrow, outside of the area covered by incidental take regulations, while Kaktovik harvested only one walrus within the geographic region. In addition, Industry observations have only recorded nine walrus observations from 1993 to 2004. Given this information, no more than a small number of walrus are likely to be taken during the length of this rule. It is unlikely that there will be any lethal take from normal Industry activities. Takes from an oil spill will depend on the presence of walrus and the size of the spill. However, because the likelihood of a spill is low and because walrus are not typically found in the region, it is unlikely that there would be a lethal take from an oil spill in the central Beaufort Sea. Therefore, we do not anticipate any detrimental effects on recruitment or survival.

*Polar Bear*

Industry exploration, development, and production activities other than an oil spill have the potential to incidentally take polar bears. Most of these disturbances are expected to be nonlethal, short-term behavioral reactions resulting in displacement, and should have no more than a minimal impact on individuals. Polar bears could be displaced from the immediate area of activity due to noise and vibrations. Alternatively, they could be attracted to sources of noise and vibrations out of curiosity, which could result in human-bear encounters. It is also possible that noise and vibration from stationary sources could keep females from denning in the vicinity of the source. Furthermore, there is a low chance of injury to a bear during a take and it is unlikely that lethal takes will occur. We do not expect the sum total of these disturbances to affect the rates of recruitment or survival of the Southern Beaufort Sea polar bear population.

Contact with or ingestion of oil could also potentially affect polar bears. Small oil spills are likely to be cleaned up immediately and should have little chance of affecting polar bears. The probability of a large spill occurring is very small and the impact of a large spill would depend on the distribution of the bears at the time of the spill, the location and size of the spill, and the success of clean-up measures, including efforts to keep bears away from affected areas. Based on the low likelihood of a large spill occurring that would affect a significant number of bears and the use of mitigation measures to deter or haze bears from an affected area, the Service has determined it is unlikely that a polar bear will come in contact with oil from a spill in the next 5 years.

Take Summary

Based on the data provided by LOA monitoring reports submitted since 1993 and additional analysis, we have

determined that any take caused by Industry since 1993 has had a negligible impact on Pacific walrus and polar bears. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, suggests that, although there have been interactions between Industry and polar bears and walrus, populations of these species will not be adversely affected by Industry. The projected level of activities during the period covered by these regulations (exploration, development, and production activities), are similar in scale to previous levels. As stated earlier, prospective production activities will likely increase the total area of Industry infrastructure in the geographic region; however, oil production levels are expected to decrease, despite new fields initiating production, due to current producing fields reducing output; and current monitoring and mitigation measures will be kept in place. Therefore, we anticipate that the amount and level of take of polar bears and Pacific walrus during the 5-year period of the regulations will remain comparable to that experienced during the previous sets of regulations.

**Conclusions**

We conclude that any take reasonably likely to or reasonably expected to occur as a result of projected activities will have no more than a negligible impact on Southern Beaufort Sea polar bear stock and Pacific walrus and will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for subsistence uses. Based on the previous discussion, we make the following findings regarding this action.

*Impact on Species*

Based on the best scientific information available, the results of monitoring data from our previous regulations, the results of our modeling assessments, and the status of the population, we find that any incidental take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities during the period of the rule, in the Beaufort Sea and adjacent northern coast of Alaska will have no more than a negligible impact on polar bears and Pacific walrus. In making this finding, we considered the following: (1) The distribution of the species; (2) the biological characteristics of the species; (3) the nature of oil and gas industry activities; (4) the potential effects of Industry activities and potential oil spills on the species; (5) the probability of oil spills occurring; (6) the documented impacts of industry activities and oil spills on the species, (7) mitigation measures that will be conditions in the LOAs and minimize effects; and (8) other data provided by monitoring programs that have been in place since 1993. We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information [53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October. 15, 1986)].

The Pacific walrus is only occasionally found during the open-water season in the Beaufort Sea. The Beaufort Sea polar bear population is widely distributed throughout its range. Polar bears typically occur in low numbers in coastal and nearshore areas where most Industry activities occur.

We reviewed the effects of the oil and gas industry activities on polar bears and Pacific walrus, which included impacts from noise, physical obstructions, human encounters, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of Pacific walrus and polar bear, we conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on polar bear and Pacific walrus populations. Furthermore, we do not expect these disturbances to affect the rates of recruitment or survival for the Pacific walrus and polar bear populations. These regulations do not authorize lethal take and we do not anticipate any lethal take will occur.

We have included potential spill information from the Liberty development (offshore scenario) in our oil spill analysis, to analyze multiple offshore sites (Northstar and Liberty). We have analyzed the likelihood of an oil spill in the marine environment of the magnitude necessary to kill a significant number of polar bears for Northstar and Liberty, and through a risk assessment analysis found that it is unlikely that there will be any lethal take. We have also considered prospective production-related activities at the Oooguruk and Nikaitchuq locations in this finding. Thus, after considering the additive effects of existing and proposed development, production, and exploration activities, and the likelihood of any impacts, both onshore and offshore, we find that the total expected takings resulting from oil and gas industry activities will have a negligible impact on polar bear and Pacific walrus populations inhabiting the Beaufort Sea area on the North Slope coast of Alaska.

The probability of an oil spill that will cause significant impacts to Pacific walrus and polar bears is extremely low. However, in the event of a catastrophic spill, we will reassess the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

Our finding of ''negligible impact'' applies to oil and gas exploration, development, and production activities. Generic conditions are attached to each LOA. These conditions minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. Generic conditions include: (1) These regulations do not authorize intentional taking of polar bear or Pacific walrus or lethal incidental take; (2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known denning areas, Industry activities may be restricted in specific locations during specified times of the year; (3) Each activity covered by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. We may add additional measures depending upon site-specific and species-specific concerns. Restrictions in denning areas will be applied on a case-by-case basis after assessing each LOA request and may require pre-activity surveys (e.g., aerial surveys, FLIR surveys, or polar bear scent-trained dogs) to determine the presence or absence of denning activity and, in known denning areas, may require enhanced monitoring or flight restrictions, such as minimum flight elevations, if necessary. We will analyze the required plan of operation and interaction plans to ensure that the level of activity and possible take are consistent with our finding that total incidental takes will have a negligible impact on polar bear and Pacific walrus and, where relevant, will not have an unmitigable adverse impact on the

availability of these species for subsistence uses.

In addition, we have evaluated climate change in regards to polar bears and walrus. Although climate change is a world-wide phenomenon, it was analyzed as a contributing effect that could alter polar bear and walrus habitat. Climate change could alter polar bear habitat because seasonal changes, such as extended duration of open water, may preclude sea ice habitat use by restricting some bears to coastal areas. The reduction of sea ice extent, caused by climate change, may also affect the timing of polar bear seasonal movements between the coastal regions and the pack ice. If the sea ice continues to recede as predicted, it is hypothesized that polar bears may spend more time on land rather than on sea ice, similar to what has been recorded in the Hudson Bay. The challenge in the Beaufort Sea will be predicting changes in ice habitat, barrier islands, and coastal habitats in relation to changes in polar bear distribution and use of habitat.

Within the described geographic region of this rule, Industry effects on Pacific walrus and polar bears are expected to occur at a level similar to what has taken place under previous regulations. We anticipate that there will be an increased use of terrestrial habitat in the fall period by polar bears. We also anticipate a slight increased use of terrestrial habitat by denning bears. Nevertheless, we expect no significant impact to these species as a result of these anticipated changes. The mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distribution or denning polar bears during the five-year timeframe of the regulations. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and that Industry may have to implement mitigation measures more often, for example, increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities may be instituted more frequently during the five-year period of the rule.

Climate change over time is a major concern to the Service and we are currently involved in the collection of baseline data to help us understand how the effects of climate change will be manifested in the Southern Beaufort Sea polar bear population. As we gain a better understanding of climate change effects on the Southern Beaufort Sea population, we will incorporate the information in future actions. Ongoing studies include those led by the USGS Alaska Science Center, in cooperation with the Service, to examine polar bear habitat use, reproduction, and survival relative to a changing sea ice environment. Specific objectives of the project include: polar bear habitat availability and quality influenced by ongoing climate changes and the response by polar bears; the effects of polar bear responses to climate-induced changes to the sea ice environment on body condition of adults, numbers and sizes of offspring, and survival of offspring to weaning (recruitment); and population age structure.

Although the Pacific walrus population is currently extra-limital in the Beaufort Sea, the Service and USGS are conducting multi-year studies on the population to ascertain a population estimate and movement patterns. Furthermore, it is plausible that as sea ice diminishes in the Chukchi beyond the five-year period of this rule, more walrus will migrate east into the Beaufort Sea.

*Impact on Subsistence Take*

Based on the best scientific information available and the results of monitoring data, we find that take caused by oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses during the period of the rule. In making this finding, we considered the following: (1) Records on subsistence harvest from the Service's Marking, Tagging and Reporting Program; (2) effectiveness of the Plans of Cooperation between Industry and affected Native communities; and (3) anticipated five-year effects of Industry activities on subsistence hunting.

Polar bear and Pacific walrus represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walrus are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Native communities with regards to Industry activities limiting availability of polar bears or walrus for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Native communities, development of Plans of Cooperation, which must identify measures to minimize any adverse effects, will be required.

The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus, as warranted.

If there is evidence during the five-year period of the regulations that oil and gas activities are affecting the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

*Monitoring and Reporting*

The purpose of monitoring requirements is to assess the effects of industrial activities on polar bears and walrus to ensure that take is consistent with that anticipated in the negligible-impact and subsistence use analyses, and to detect any unanticipated effects on the species. Monitoring plans document when and how bears and walrus are encountered, the number of bears and walrus, and their behavior during the encounter. This information allows the Service to measure encounter rates, trends of bear and walrus activity in the industrial areas, such as numbers and gender, activity, and seasonal use. Monitoring plans are site-specific, dependent on the location of the activity to habitat, such as den sites, travel corridors, and food sources; however, all activities are required to report all sightings of polar bears and walrus. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry. Activities within the coast of the geographic region may incorporate

daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring protocols will be implemented in order to statistically monitor observation trends of walrus or polar bears in the nearshore areas where they usually occur.

Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Since production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

**Discussion of Comments on the Proposed Rule**

The proposed rule, which was published in the **Federal Register** (71 FR 14446) on March 22, 2006, included a request for public comments. The closing date for the comment period was April 21, 2006. We received three comments. One commenter indicated support for the rule but did not provide specific comments. One commenter provided new comments but also incorporated by reference their comments on the 2000 proposed rule (65 FR 16828, March 30, 2000) and the 2003 proposed rule (68 FR 66744, August 29, 2003). The following issues were raised by the commenters.

(1) *Comment:* One commenter asserted that the Service needs to conduct a more comprehensive analysis of oil and gas operations by considering the direct effect of these operations together with (1) other oil and gas activities that affect these populations; and (2) other natural and anthropogenic risk factors (e.g., climate change). Two commenters criticized the rule for failure to analyze the indirect effects of Industry activities on polar bear and walrus prey species and cumulative effects of Industry activities.

*Response:* The Service analysis of oil and gas activities for this rulemaking encapsulates all of the known oil and gas industry's activities that will occur in the geographic region during the 5-year regulation period. If additional activities are proposed that were not included in the Industry petition or otherwise known at this time, the Service will evaluate the potential impacts associated with those projects to determine whether a given project lies within the scope of the analysis for these regulations.

The Service has analyzed oil and gas operations taking into account risk factors to polar bears and walrus such as, potential habitat loss due to climate change, hunting, disease, oil spills, contaminants, and effects on prey species within the geographic region. We have expanded our analysis in the final rule to include more detail on potential effects due to the pressing issue of climate change and the indirect effects on polar bears and walrus, such as the potential effects of Industry activities on prey species.

The Service's analysis for this rulemaking does consider cumulative effects of all oil and gas activities in the area over time. Cumulative impacts of oil and gas activities are assessed, in part, through the information we gain in monitoring reports, which are required for each operator under the authorizations. Incidental take regulations have been in place in the Arctic oil and gas fields for the past 13 years. Information from these reports provides a history of past effects on walrus and polar bears from interactions with oil and gas activities. Information on previous levels of impact are used to evaluate future impacts from existing and proposed industry activities and facilities. In addition, information used in our cumulative effects assessment includes research publications and data, information from the 2003 Beaufort Sea Polar Bear Monitoring Workshop, traditional knowledge of polar bear habitat use, anecdotal observations, and professional judgment.

Monitoring results indicate little to no short-term impact on polar bears or Pacific walrus from oil and gas activities. We evaluated the sum total of both subtle and acute impacts likely to occur from industrial activity and, using this information, we determined that all direct and indirect effects, including cumulative effects, of industrial activities would not adversely affect the species through effects on rates of recruitment or survival. Based on past monitoring reports, the level of interaction between Industry and polar bears and Pacific walrus has been minimal. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, provide evidence that these populations have not been adversely affected. For the next five years, we anticipate the level of oil and gas industry interactions with polar bears and Pacific walrus will be similar to interactions of the past years.

(2) *Comment:* This same commenter stated that the Service needs to provide estimates of the annual and five-year probabilities of a large spill for each individual project and from all projects combined to provide better insights into the likelihood of a spill resulting in mortality of polar bears or walrus. They pointed out that the likelihood values for oil spill probabilities are not presented.

*Response:* The Service provided five-year estimates for the probability of a large spill at two offshore production sites, Northstar and the proposed Liberty development, in the supplemental Risk Assessment Analysis document for this rule. These estimates are incorporated in the final rule. It should be noted that we believe spill probabilities alone are insufficient to assess the risk to polar bears. Therefore, to address this issue, our risk assessment incorporates the likelihood that a spill would occur as well as the potential impacts of such a spill. The rule contains a discussion of these quantified impacts as well as qualitative analysis of other potential sources and sizes of oil spills. Walrus are extralimital in the area covered by these regulations (as discussed in the body of the rule); we do not anticipate any level of effect on walrus.

Although spill probabilities for the other offshore facilities in development, such as Oooguruk and Nikaitchuq, would provide the Service better insights into the impacts of oil spills on polar bears and walrus, oil spill trajectories were unavailable for these sites, and the analysis presented represents the best data and science available. We understand that variables for the risk assessment for these other offshore sites will be different than Northstar and Liberty; however, the Service believes that the analysis of two known sites led to a valid representation and analysis of the types of risks polar bears would encounter if a large spill occurred in the nearshore areas of the

Beaufort Sea. We determined that the probability of a large-volume spill being associated with high polar bear mortality is low, and thus, warrants our finding of negligible impact.

(3) *Comment:* This same commenter noted that the regulations should include a description of mitigation measures that will be established to minimize impacts to polar bears.

*Response:* Although the Service did include a description of mitigation measures that will be required of Industry to minimize the impacts to polar bears and walrus and ensure that the negligible impact standard is not exceeded, we did not clarify which measures will be required for all projects and which mitigation measures will be required on a project-by-project basis. We have revised the regulations to specify those mitigation measures that will be required for all oil and gas activities and those that may be required, depending on the type or location of the activity. For those that are not required for all activities, we have described under what conditions that type of mitigation measure will be required.

(4) *Comment:* Two commenters remarked that the proposed rule failed to describe in detail the monitoring requirements for each activity. In addition, one commenter remarked that the monitoring program has to measure negligible impacts on affected species. The other commenter asserted that the monitoring program should be capable of detecting when and how polar bears and walrus are taken.

*Response:* The purpose of monitoring requirements is to assess the effects of industrial activities on polar bears and walrus to ensure that take is consistent with that anticipated in the negligible-impact and subsistence use analyses, and to detect any unanticipated effects on the species. The Service has clarified in the rule the monitoring requirements for Industry activity.

There is no requirement that monitoring associated with authorization of incidental take be sufficient on its own to assess whether take associated with the activities has a negligible impact on the species or stock. Rather, information from the oil and gas monitoring program is one piece of information that along with other information is used to determine the level of take that is likely to occur and the effect of that take on the species or stock. Existing monitoring programs that have been in place, or are currently in place, and provide pertinent information, specifically for polar bears, in relation to oil and gas activities on the North Slope were identified at the 2003 Beaufort Sea Polar Bear Monitoring Workshop and are listed below:

1. Fall coastal polar bear aerial surveys;
2. Ice monitoring for offshore oil and gas operations in the oilfield units;
3. Weather monitoring;
4. Polar bear subsistence harvest monitoring;
5. Ringed seal on-ice aerial surveys and monitoring (LGL Alaska Research Associates' Northstar Before-After/Control-Impact Study and Alaska Department of Fish and Game (ADFG) aerial surveys);
6. Polar bear tissue archiving: Arctic Marine Monitoring and Trends Assessment Program;
7. Known polar bear den monitoring by the Service and USGS;
8. Bowhead whale physiology data based on harvest information from ADFG;
9. Circumpolar contaminant studies, monitoring polar bear contaminant levels;
10. Bowhead carcass monitoring data for polar bears from MMS Bowhead Whale Aerial Survey Program;
11. Arctic Nearshore Impact Monitoring in the Developed Area;
12. Global Information System data of offshore industry activities from the MMS Human Activities Database;
13. Alaska Department of Environmental Conservation oil spill database;
14. National Ice Data Base;
15. North Slope Borough community polar bear patrols;
16. Aerial photographs of the north slope terrestrial habitat (various government agencies and private companies); and
17. Arctic Borderlands program, monitoring climate change.

Pacific walrus are considered extralimital in the Beaufort Sea. Consequently, there are relatively few monitoring programs currently in operation. Should the distribution and abundance of walrus in the Beaufort Sea change, additional monitoring and research programs may be warranted in future regulations. Beaufort Sea Monitoring programs for walrus include:

1. The Marking, Tagging, and Reporting Program, which monitors the subsistence take of walrus by native hunters from the communities of Barrow and Kaktovik;
2. Walrus samples have been contributed to the Arctic Marine Mammal Tissue Archival Project in support of environmental contaminant studies; and
3. Offshore exploration activities have included marine mammal monitoring programs to mitigate disturbances.

We agree that ultimately a comprehensive approach to monitoring the effects of oil and gas activities is important. We identified the utility of a long-term monitoring and research strategy at the 2003 Beaufort Sea Polar Bear Monitoring Workshop. Such a coordinated strategy would improve our ability to determine whether cumulative impacts from activities are adversely affecting polar bears and walrus and to detect and measure changes in their populations.

(5) *Comment:* One commenter recommended that the Service, the applicant, and other available agencies and organizations should develop a broad-based population monitoring and impact assessment program to ensure that these activities, in combination with other risk factors, are not (1) individually or cumulatively having any population-level effects on polar bear and walrus populations, and (2) adversely affecting the availability of these marine mammals for subsistence uses by Alaska natives.

*Response:* The Service agrees with this comment, in part. One basic purpose of monitoring polar bears and walrus within the oil and gas fields on the North Slope of Alaska is to establish baseline information on polar bear and walrus use and encounters and to detect any unforeseen effects of Industry activities. We agree that a broad-based, long-term monitoring program would be useful to refine our understanding of the impacts of oil and gas activities on polar bears, walrus, and their habitat over time, and to detect and measure changes in the status of the overall polar bear and walrus populations in the Beaufort Sea. Examples of current monitoring necessary for this type of broad-based monitoring plan have been discussed in Comment 4; however, a broad-based population monitoring plan as described by the commenter would need to incorporate research elements as well. When making our findings, the Service uses the best and most current information regarding polar bears and walrus. The integration of, and improvement in, research and monitoring programs would be useful in assessing potential effects to rates of recruitment and survival and the population parameters linked to assessing population level impacts from oil and gas development.

Nonetheless, monitoring provisions associated with these types of regulations were never intended as the sole means to determine whether the activities will have a negligible effect on

polar bear or walrus populations. There is nothing in the MMPA that indicates that Industry is wholly responsible for conducting general population research. Thus, we have not required industry to conduct such population research and instead require monitoring of the observed effect of the activity on polar bear and walrus. We are constantly accumulating information, such as reviewing elements of existing and future research and monitoring plans that will improve our ability to detect and measure changes in the polar bear and walrus populations. We further acknowledge that additional or complimentary research, studies, and information, collected in a timely fashion, is useful to better evaluate the effects of oil and gas activities on polar bears and walrus.

As information and technology improves, the monitoring program will continue to evolve. Our goal is to continue to improve on the collection of the types of information that have been useful in assessing Industry effects in the past. We also anticipate that additional analysis and collection of additional data will be useful to improve upon future longer-range impact assessment. We also acknowledge that creating a comprehensive research and monitoring program capable of developing information of sufficient resolution to detect changes in population rates of recruitment and survival is a formidable task and a worthy goal.

Regarding the availability of polar bears and walrus for subsistence uses, the Service requires that the oil and gas industry consult with villages and possibly formulate a Plan of Cooperation for any activities that occur in or near areas of traditional subsistence hunting to assure that any concerns of subsistence users are being addressed and that polar bears and walrus remain available for subsistence uses. Plans of cooperation are included as part of the broad-based monitoring strategy for Industry impacts on polar bears and Pacific walrus. It is also the intent of the Service to offer guidance for communities and Industry when they are developing Plans of Cooperation.

(6) *Comment:* The same commenter asserted that a broad-based monitoring program initially should focus on the need to collect adequate baseline information to allow future analyses of effects and that such baseline information should be collected before further oil and gas operations commence.

*Response:* We agree with the commenter that baseline data is important information to ensure proper analysis of future effects. Information collection regarding the Service's trust species is a constant activity, whether or not the information is collected as a direct result of oil and gas operations. The current monitoring program allows the Service to monitor bear movements in the oilfield and focuses on limiting polar bear/human interactions. Information from monitoring is used to track the effects of the oil and gas industry on the population and availability of marine mammals for subsistence uses to surrounding villages. We acknowledge that the current monitoring program can be expanded, and to that end we are constantly improving data collection and evolving the impact analysis. The Service has been conducting population, contaminant, distribution, and behavioral studies in an effort to gather data to better understand the ecology of polar bears and walrus in Alaska. For example, from 1999 to 2005, the Service has conducted fall coastal area surveys along the north coast of Alaska to monitor polar bear distribution throughout the North Slope. This includes areas of existing development, proposed development, and non-developed areas. Furthermore, the Service reviews satellite relocations from radio-collared polar bears that have been previously captured by USGS to monitor the distribution of the bears. In addition, the Service collects baseline data on contaminant levels (chlorinated hydrocarbons), such as polychlorinated biphenyls (PCBs), polybrominated diphenylethers (PBDEs), and heavy metal contaminants from bears in Alaska. Contaminant levels in polar bears residing in Alaska are relatively low, except for hexachlorocyclohexanes (HCH), and thus, we would not expect immune and reproductive effects that may be having effects on other polar bear populations, such as the Svalbard polar bear population. Information on walrus is collected from a variety of sources as detailed in the response to Comment #4.

In addition, in the past 30 years the Service and USGS have been gathering an abundance of baseline data on survival and recruitment, denning ecology, distribution, population bounds, and habitat use, of polar bears and walrus. This information will be used as a baseline for future studies in order to understand the ecological effects of climate change in the Arctic.

In regards to baseline data being collected prior to the commencement of further oil and gas operations, the statute does not require that the agency have complete or perfect information prior to authorizing incidental take. Rather, the Service makes its findings based on the best available information. While the Service acknowledges that additional information would be beneficial to our understanding of the effects of Industry activities on these species (see response to comment 5 above), currently available information is adequate to assess the direct and indirect effects of Industry activities on the species and on the availability of the species for taking for subsistence use. In addition, incidental take regulations do not authorize the actual oil and gas activities. Thus, the Service cannot require that certain information be collected prior to the commencement of a particular activity. The Service has been given the authority under the MMPA to authorize incidental take associated with activities that are likely to cause the taking of one or more marine mammals, provided that any take reasonably likely to occur meets the statutory standards. The monitoring requirements are a component of authorizing incidental take, and are not associated with whether the applicant can proceed with the underlying activity.

(7) *Comment:* One commenter asserted that the Service does not adequately ''specify'' the activities to be covered by the take authorization.

*Response:* We disagree. The preamble of the rule provides a thorough description of the activities to be conducted by the oil and gas industry during the next 5 years within the described geographic region. In addition, the petitioner's application, which provides an even more complete description of the activities proposed by Industry, including locations and time schedules, was available to the public for inspection during the public comment period.

(8) *Comment:* One commenter argued that the Service has misinterpreted the MMPA's standards for authorizing the taking of small numbers and that the takings have a negligible impact on a species or stock.

*Response:* The Service's analysis of ''small numbers'' complies with the agency's regulatory definition and is an appropriate reflection of Congress' intent. As we noted during our development of this definition (48 FR 31220, July 7, 1983), Congress itself recognized the ''imprecision of the term 'small numbers,' but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits.'' See H.R. Report No. 97–228 at 19. Thus, Congress itself focused on the anticipated effects of the activity on the

species and that authorization should be available to persons ''whose taking of marine mammals is infrequent, unavoidable, or accidental.'' Id.

(9) *Comment:* This same commenter argued that the Service has failed to make a separate finding that only ''small numbers'' of Pacific walrus and polar bears will be affected by the authorization and that no numerical estimate has been given for the number of polar bears and Pacific walrus that will be taken during the five-year period.

*Response:* We have determined that the anticipated number of polar bears and walrus that are likely to modify their behavior as a result of oil and gas industry activity is small. In most cases, takes are a behavioral change that will be temporary, minor behavioral modifications that will have no effect on rates of recruitment or survival. Other takes will be associated with deterrence or hazing events. For example, information on animal interactions during the calendar years, 2003 and 2004, which spanned the last regulatory period (November 28, 2003, to March 28, 2005), indicated that there were 52 individual polar bear sightings in 2003 and 127 bear sightings in 2004. It is important to note that the bear sightings may have included multiple observations of the same bear. In 2003, only 29 out of the 52 observations of bears involved an interaction that qualified as a taking, all of which were limited to level B harassment that resulted in a temporary behavioral change. Likewise, in 2004 only 58 out of the 127 observations qualified as takes of a similar level, again all of which were limited to level B harassment. This shows that only a small number of bears (relative to the overall bear population) are even observed within the vicinity of Industry activities and, of those, an even smaller number are engaged in an interaction that qualifies as take. All of these takes have been limited to level B harassment. During the same 2-year period, only three walrus were observed by Industry activities. Of these three walrus, only two were engaged in an interaction that qualified as take, both of which were limited to Level B harassment. The Service anticipates that the amount and level of take in the coming five years will be consistent with the amount and level of take in recent years, as described above.

Takes that could potentially have effects on rates of recruitment and survival are associated with oil spills. We calculated that the probability of a spill occurring that could cause mortality of one or more polar bears is 0.4–1.3 percent. The likelihood of taking more than one bear decreases as the number of potential bears taken in a single spill event increases, such that, the probability of a spill occurring that could cause the mortality of 5 or more bears is 0.3–1.1 percent; for 10 or more bears is 0.3–0.9 percent; and for 20 or more bears is 0.1–0.5 percent. Thus, the anticipated level of take of polar bears from an oil spill also qualifies as a ''small'' number.

(10) *Comment:* The same commenter challenged the Service's findings as inadequate because the commenter claims that the Service's analysis underestimates the amount of oil and gas activity that will occur in the next 5 years, with specific emphasis on seismic surveys.

*Response:* The Service addressed and presented all the Industry activities supplied by the petitioner and known to the Service for analysis that are expected to occur in the next 5 years. Discussion in the preamble clarifies the evaluation in the rule and considers the projected future activities in addition to ongoing activities and existing facilities.

In regards to seismic surveys, previous regulations have analyzed open water seismic activity even though open water seismic has not occurred on an annual basis in the Beaufort Sea. We have accounted for multiple seismic surveys by estimating total track lines.

(11) *Comment:* This commenter also asserted that the Service's findings are not supportable because the Service failed to adequately analyze the effects of climate change on polar bears and Pacific walrus.

*Response:* The proposed rule did consider the anticipated effects of climate change on polar bears and walrus in the Beaufort Sea in the coming five years, and how that is likely to affect take associated with Industry activities. Nonetheless, additional information has been incorporated into the final rule.

(12) *Comment:* One commenter asserted that for the same reasons that they believe the Service's negligible impact finding is unsupportable, they also believe that the Service's finding that anticipated incidental take will not have ''an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses'' by Alaska Natives is arbitrary and capricious.

*Response:* For the same reasons explained in the responses above and in the final rule, the Service's finding is fully supported and meets all statutory standards. The Service's finding is based on the best available information, such as information from the polar bear and walrus harvest data provided by the three affected communities (Barrow, Kaktovik, and Nuiqsut), which indicates that activities will not have an unmitigable, adverse impact on the availability of species for taking for subsistence uses. We also based our finding on the results of coastal aerial surveys conducted within the area during the past 3 years, upon direct observations of polar bears occurring near bowhead whale carcasses on Barter Island and on Cross Island during the villages of Kaktovik and Nuiqsut's annual fall bowhead whaling efforts, respectively, and upon anecdotal reports of North Slope residents. The Service has not received any reports and is aware of no information that indicates that bears or walrus are being or will be deflected or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity.

(13) *Comment:* One commenter asserted that the incidental take regulations violate the mandate of the 1973 Agreement on the Conservation of Polar Bears to protect essential polar bear habitat.

*Response:* The incidental take regulations are consistent with the Agreement. Article II of the Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat: (1) To take ''appropriate action to protect the ecosystem of which polar bears are a part;'' (2) to give ''special attention to habitat components such as denning and feeding sites and migration patterns;'' and (3) to manage polar bear populations in accordance with ''sound conservation practices'' based on the best available scientific data. The Service's actions are consistent with these responsibilities.

This rule is consistent with the Service's treaty obligations because it incorporates mitigation measures that ensure the protection of polar bear habitat. LOAs for industrial activities are conditioned to include area or seasonal timing limitations or prohibitions, such as placing 1-mile avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den), building roads perpendicular to the coast to allow for polar bear movements along the coast, and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by USGS.

In addition to the protections provided for known or observed dens, industry has assisted in the research of forward looking infrared (FLIR) thermal imagery, which is useful in detecting the heat signatures of polar bear dens.

By conducting FLIR surveys prior to activities to discern polar bear dens along with verification of these dens by scent-trained dogs, disturbance of even unknown denning females is limited. Another area of industry support has been the use of digital elevation models and aerial imagery in identifying habitats suitable for denning.

LOAs also require the development of polar bear-human interaction plans in order to minimize potential for encounters and to mitigate for adverse effects should an encounter occur. These plans enhance the safety of polar bears using habitats within the area of industrial activity. Finally, as outlined in our regulations at 50 CFR 18.27(f)(5), LOAs may be withdrawn or suspended, if non-compliance of the prescribed regulations occurs.

To conclude, while oil and gas activities occupy a relatively small proportion of available polar bear habitat of Alaska, the Service is aware of potential far-reaching effects of these activities. The Service has ensured that these regulations are consistent with our treaty commitments.

(14) *Comment:* One commenter stated that, in accordance with NEPA, there was inadequate public notice for the incidental take regulations.

*Response:* A **Federal Register** publication announcing the availability of NEPA documentation is an acceptable means for notifying the public and inviting an opportunity to comment. The Service announced the availability of a draft Environmental Assessment (EA) prepared in conjunction with the proposed rulemaking in the **Federal Register** on March 22, 2006 (71 FR 14446). The **Federal Register** notice also provided contact information for obtaining a copy of the draft EA. Therefore, the Service believes that it provided sufficient notice to the public through the **Federal Register** process and was within the procedural requirements of NEPA. When this commenter requested a copy of the EA, a copy was provided on April 21, 2006.

(15) *Comment:* This same commenter stated that, in accordance with NEPA, the Service must prepare a full Environmental Impact Statement for this rulemaking.

*Response:* The Service analyzed the proposed activity, i.e., issuance of implementing regulations, in accordance with the criteria of NEPA and made an initial determination that it does not constitute a major Federal action significantly affecting the quality of the human environment. The regulations have been in place since 1993 and, therefore, are not unique and are based on known and documented risks. Furthermore, the regulations have been an effective tool for minimizing risk from oil and gas industrial activities and polar bears and walrus.

The EA analyzed potential impacts of these regulations on the Service's trust species rather than the potential impacts of the oil and gas activities. It should be noted that the Service does not authorize the actual Industry activities. Those activities are authorized by other State and Federal agencies, and would likely occur even without incidental take authority. These regulations provide the Service with a means of interacting with Industry to ensure that the impacts to polar bears and Pacific walrus are minimal. Furthermore, the analysis in the EA found that the proposed activity would have a negligible impact on Pacific walrus and polar bears and would not have an unmitigable adverse impact on subsistence users, thereby resulting in a ''Finding of No Significant Impact (FONSI).'' Therefore, in accordance with NEPA, an EIS is not required.

(16) *Comment:* One commenter asserted that the Service failed to consider the cumulative effects of all the past, present, and likely future activities and events affecting the polar bear and walrus in its NEPA analysis.

*Response:* Cumulative effects have been analyzed in the context of making a negligible effect finding. From the Service perspective, impacts to polar bears and walrus will be minimized with regulations in place because the Service will have increased ability to work directly with the Industry operators to implement mitigation measures.

**Effective Date**

In accordance with 5 U.S.C. 553(d)(3), we find that we have good cause to make this rule effective immediately upon publication. To protect the affected species and reduce the chances of lethal and nonlethal effects from Industry, Industry needs to implement mitigation measures and monitoring programs on the North Slope of Alaska when there is a possibility for polar bear or walrus encounters in the industrial area considered within this rule. Immediate effectiveness of this rule will allow these protective mechanisms to be put into effect immediately.

**Required Determinations**

*NEPA Considerations*

We have prepared an Environmental Assessment (EA) in conjunction with this rulemaking, and have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the Environmental Assessment, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

*Regulatory Planning and Review*

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues.

Expenses will be related to, but not necessarily limited to, the development of applications for LOAs, monitoring, recordkeeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 13 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 2002) and LOA requests probably does not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

*Small Business Regulatory Enforcement Fairness Act*

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for

consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. Therefore, a Regulatory Flexibility Analysis is not required. In addition, these potential applicants have not been identified as small businesses and, therefore, a Small Entity Compliance Guide is not required. The analysis for this rule is available from the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

*Taking Implications*

This rule does not have a takings implication under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

*Federalism Effects*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis.

We have evaluated possible effects on federally recognized Alaska Native tribes. Through the LOA process identified in the regulations, Industry presents a Plan of Cooperation with the Native Communities most likely to be affected and engages these communities in numerous informational meetings.

*Civil Justice Reform*

The Departmental Solicitor's Office has determined that these regulations do not unduly burden the judicial system and meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act*

The information collection requirements included in this rule are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The OMB control number assigned to these information collection requirements is 1018–0070, which expires on October 31, 2007. This control number covers the information collection, recordkeeping, and reporting requirements in 50 CFR part 18, subpart J, which are associated with the development and issuance of specific regulations and LOAs.

*Energy Effects*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration, development, and production of oil and gas in the Beaufort Sea and adjacent coastal areas of northern Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

## PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 et seq.

■ 2. Revise part 18 by adding a new subpart J to read as follows:

## Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 What specified activities does this subpart cover?
18.122 In what specified geographic region does this subpart apply?
18.123 When is this subpart effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the mitigation, monitoring, and reporting requirements?
18.129 What are the information collection requirements?

### § 18.121 What specified activities does this subpart cover?

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

### § 18.122 In what specified geographic region does this subpart apply?

This subpart applies to the specified geographic region defined by a north-south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf

waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is not included in the area covered by this subpart. Figure 1 shows the area where this subpart applies.

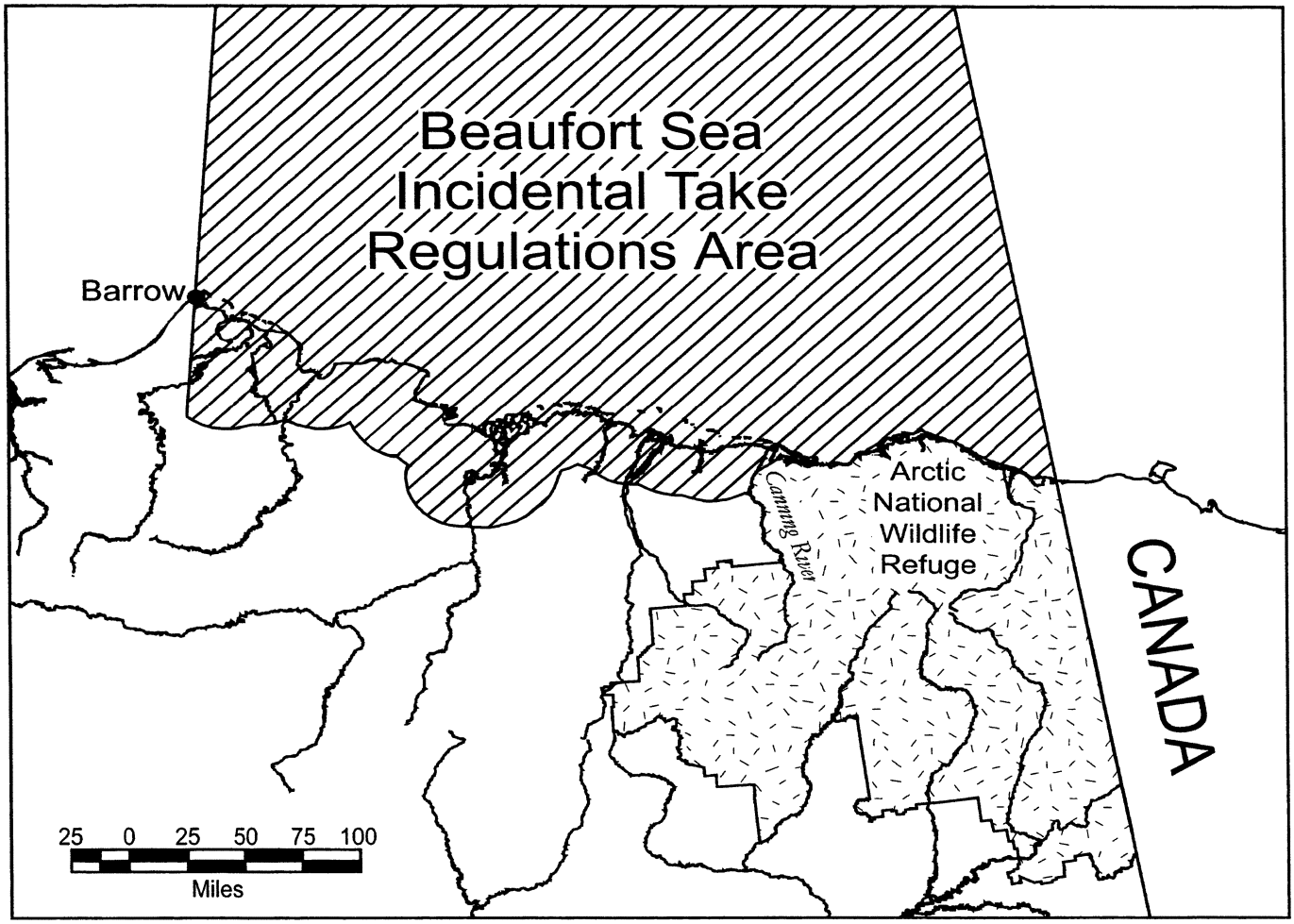



Figure 1. Specific geographic region covered by the Beaufort Sea incidental take regulations.

**§ 18.123 When is this subpart effective?**

Regulations in this subpart are effective from August 2, 2006 through August 2, 2011 for year-round oil and gas exploration, development, and production activities.

**§ 18.124 How do I obtain a Letter of Authorization?**

(a) You must be a U.S. citizen as defined in § 18.27(c).

(b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may cause the taking of polar bear or Pacific walrus in execution of those activities and you want nonlethal incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development or production area. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity, i.e., a Plan of Operation.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activities. Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site-specific polar bear awareness and interaction plan.

(4) A Plan of Cooperation to mitigate potential conflicts between the

proposed activity and subsistence hunting, where relevant. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Some of these measures may include, but are not limited to, mitigation measures described in § 18.128.

**§ 18.125 What criteria does the Service use to evaluate Letter of Authorization requests?**

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

**§ 18.126 What does a Letter of Authorization allow?**

(a) Your Letter of Authorization may allow the nonlethal incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine specific impacts of each activity;

(6) Conducting restoration, remediation, demobilization programs, and associated activities.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

**§ 18.127 What activities are prohibited?**

(a) Intentional take and lethal incidental take of polar bear or Pacific walrus; and

(b) Any take that fails to comply with this part or with the terms and conditions of your Letter of Authorization.

**§ 18.128 What are the mitigation, monitoring, and reporting requirements?**

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) All holders of Letters of Authorization are required to have an approved polar bear and/or walrus interaction plan on file with the Service and on-site, and polar bear awareness training will also be required of certain personnel. Interaction plans must include:

(1) The type of activity and, where and when the activity will occur, i.e., a Plan of Operation;

(2) A food and waste management plan;

(3) Personnel training materials and procedures;

(4) Site at-risk locations and situations;

(5) Walrus/bear observation and reporting procedures; and

(6) Bear/walrus avoidance and encounter procedures.

(d) All applicants for a Letter of Authorization must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations and submit to us a record of communication that documents these discussions. If appropriate, the applicant for a Letter of Authorization must also submit to us a Plan of Cooperation that ensures that activities will not interfere with subsistence hunting and that adverse effects on the availability of polar bear or Pacific walrus are minimized.

(e) Mitigation measures that may be required on a case-by-case basis include:

(1) The use of trained marine mammal monitors associated with marine activities. We may require a monitor on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of Industry's activity on polar bear and Pacific walrus.

(2) The use of den habitat map developed by the USGS. A map of potential coastal polar bear denning habitat can be found at: *http://www.absc.usgs.gov/research/sis_summaries/polar_bears_sis/mapping_dens.htm.* This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(3) The use of Forward Looking Infrared (FLIR) imagery, polar bear scent-trained dogs, or both to determine the presence or absence of polar bear dens in area of the activity.

(4) Restricting the timing of the activity to limit disturbance around dens.

(5) Requiring a 1-mile exclusion buffer surrounding known dens. If known occupied dens are located within an operator's area of activity, we will require a 1-mile exclusion buffer around the den to limit disturbance or require that the operator conduct activities after the female bears emerge from their dens. We will review these requirements for extenuating circumstances on a case-by-case basis.

(f) For exploratory and development activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (Attn: Marine Mammals Management Office) within 90 days after completion of activities. For production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director (Attn: Marine Mammals Management Office) by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities required under subsection (g) of this

section, including an estimated level of take.

(g) Monitoring requirements include, but are not limited to:

(1) For all activities, all sightings of polar bears and walrus must be recorded. To the extent possible, the monitor will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry activity.

(2) Activities within the coast of the geographic region may incorporate daily polar bear watch logs.

(3) Polar bear monitors will be required under the monitoring plan if polar bears are known to frequent the area or known polar bear dens are present in the area. Monitors will act as an early detection system in regards to proximate bear activity to Industry facilities.

(4) Offshore sites may require systematic monitoring protocols for polar bears and walrus due to their nearshore locations. Systematic monitoring may be implemented to statistically monitor observation trends of walrus or polar bears in the nearshore areas where they usually occur.

**§ 18.129 What are the information collection requirements?**

(a) The Office of Management and Budget has approved the collection of information contained in this subpart and assigned control number 1018–0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act (MMPA). We will use the information to (1) evaluate the application and determine whether or not to issue specific Letters of Authorization and (2) monitor impacts of activities conducted under the Letters of Authorization.

(b) You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240.

Dated: July 21, 2006.

**Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06–6626 Filed 8–1–06; 8:45 am]

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