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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 71, No. 161

Monday, August 21, 2006

Agency for Healthcare Research and Quality
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48548–48549

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48529–48530

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48530–48531

Army Department
See Engineers Corps
NOTICES
Environmental statements; notice of intent:
Fort Erwin, CA; brigade combat team transformation, 48542

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48533–48534

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48550

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48550–48551

Coast Guard
RULES
Drawbridge operations:
New York, 48477
Organization, functions, and authority delegations:
Commanding Officer, National Maritime Center, 48480–48483
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Pamunkey River, West Point, VA, 48477–48479
Regattas and marine parades:
Ocean City Maryland Offshore Challenge, 48475–48477
PROPOSED RULES
Drawbridge operations:
Wisconsin, 48498–48500
Transportation Worker Identification Credential Program; maritime sector implementation:
Commercial driver's license hazardous materials endorsement, 48527–48528

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48532–48533

Committee for the Implementation of Textile Agreements
NOTICES
North American Free Trade Agreement; commercial availability—
Cellulose acetate filament yarns, 48538–48539

Defense Department
See Army Department
See Engineers Corps
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48539–48541
Meetings:
National Security Education Board, 48541
Scientific Advisory Board, 48542

Delaware River Basin Commission
PROPOSED RULES
Water Quality Regulations, Water Code, and Comprehensive Plan:
Lower Delaware River; special protection waters classification, 48497–48498

Drug Enforcement Administration
NOTICES
Registration revocations, restrictions, denials, reinstatements:
Noramco Inc., 48557
Applications, hearings, determinations, etc.:
Sigma Aldrich Manufacturing LLC, 48556–48557

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48543
Meetings:
Historically Black Colleges and Universities, President's Board of Advisors, 48543–48544

Employee Benefits Security Administration
NOTICES
Employee benefit plans; individual exemptions:
Plumbers & Pipefitters National Pension Fund, 48768–48788
Southwest Gas Corp., 48788–48792

Employment and Training Administration
NOTICES
Reports and guidance documents; availability, etc.:
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery—
Salary and bonus limitations; implementation, 48557–48559

Energy Department
See Federal Energy Regulatory Commission
RULES
Conflict of interests, 48447–48449
NOTICES
Reports and guidance documents; availability, etc.:
DOE draft strategic plan; comment request, 48544

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Berth 97-109 Container Terminal Project, CA, 48542–48543

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan priorities list, 48479–48480
PROPOSED RULES
Air pollution control:
Indian country; new sources and modification review, 48696–48750
Solid waste:
Hazardous waste; alternative generator requirements applicable to academic laboratories, 48500–48501
NOTICES
Meetings:
Science Advisory Board, 48546–48547

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 48466–48470
Boeing
Correction, 48466
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 48463–48465
Sandel Avionics Inc., 48461–48463
Airworthiness standards:
Special conditions—
Airbus Model A380-800 airplanes, 48449–48461
Standard instrument approach procedures, 48470–48473
PROPOSED RULES
Airworthiness directives:
Boeing, 48493–48495
Bombardier, 48487–48490
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 48490–48493
Class E airspace, 48495–48496
NOTICES
Aeronautical land-use assurance; waivers:
Detroit Metropolitan Wayne County Airport, MI, 48573–48576
Freeman Municipal Airport, IN, 48576–48577
Northeast Alabama Regional Airport, AL, 48577–48578
Watertown Municipal Airport, WI, 48578
Agency information collection activities; proposals, submissions, and approvals, 48578–48579

Federal Communications Commission
PROPOSED RULES
Common carrier services, etc.:
698-746, 747-762, and 777-792 MHz bands, enhanced 911 emergency calling systems, and hearing aid-compatible telephones, 48506–48527

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Electric energy, capacity, and ancillary services; wholesale sales; market-based rates, 48496–48497
NOTICES
Electric rate and corporate regulation combined filings, 48544–48546

Federal Transit Administration
NOTICES
Reports and guidance documents; availability, etc.:
Disadvantaged Business Enterprise Program, public transportation providers; western States guidance, 48579–48580

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery Plans—
Chittenango ovate amber snail, 48554–48555

Food and Drug Administration
NOTICES
Meetings:
Molecular methods in immunohematology; workshop, 48551

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
QUALCOMM Inc.; digital wireless telecommunication products manufacturing facilities, 48534
Colorado
QUALCOMM Inc.; digital wireless telecommunication products manufacturing facilities, 48534–48535
North Carolina
QUALCOMM Inc.; digital wireless telecommunication products manufacturing facilities, 48535–48536

Forest Service
NOTICES
Recreation fee areas:
Homochito National Forest, MS; access fees, 48531

General Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48547
Privacy Act; systems of records, 48752–48765

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See Inspector General Office, Health and Human Services Department
NOTICES
Meetings:
BioShield Project; stakeholders workshop, 48547–48548

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Indian Affairs Bureau
PROPOSED RULES
Indian Tribal Energy Development and Self-Determination Act:
Tribal energy resource agreements, 48626–48645

Indian Health Service
NOTICES
Inpatient and outpatient medical care; reimbursement rates (2006 CY), 48552

Inspector General Office, Health and Human Services Department

NOTICES
Social Security Act:
State Medicaid programs; false or fraudulent claims; evaluation guidelines, 48552–48554

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Separate limitations application to dividends from noncontrolled section 902 corporations
Correction, 48474–48475
Stock dispositions; suspension of losses
Correction, 48473–48474
PROPOSED RULES
Income taxes:
Expenditures related to tangible property; deduction and capitalization; guidance, 48590–48623
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48582–48586

International Trade Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48536

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Mid-Valley Pipeline Co., et al., 48555–48556

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration

Legal Services Corporation
PROPOSED RULES
Client grievance procedures, 48501–48506

Millennium Challenge Corporation
NOTICES
Millennium Challenge Act:
Benin compact; correction, 48559–48560
Ghana compact, 48648–48693

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Continental Tire North America, Inc., 48580–48581

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands atka mackerel, 48485–48486
Bering Sea and Aleutian Islands pollock, 48483–48485
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; correction, 48483
NOTICES
Environmental statements; notice of intent:
Pacific sardine harvest guideline; annual allocation alternatives; withdrawn, 48537
Marine mammals:
Incidental taking; authorization letter, etc.—
U. S. Navy; Surveillance Towed Array Sensor System Low Frequency Active sonar operations, 48537–48538
Scientific research permit applications, determinations, etc., 48538

National Park Service
NOTICES
Native American human remains, funerary objects; inventory, repatriation, etc.:
Department of Anthropology Museum, University of California, Davis, CA; correction, 48587

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Coal Creek, Cedar City, UT; flood-control improvements, 48531–48532

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Michigan Biotechnology Institute, 48560–48561
Reports and guidance documents; availability, etc.:
LCO 3.10.1, inservice leak and hydrostatic testing operation using consolidated line item improvement process; model safety evaluation, 48561–48564
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 48560

Nuclear Waste Technical Review Board
NOTICES
Meetings:
Yucca Mountain, NV—
Potential corrosion of material for packaging waste at proposed repository, 48564
Safety case for proposed repository, 48564–48565

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48565
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 48566–48567
International Securities Exchange, Inc., 48567–48569
New York Stock Exchange LLC, 48569–48571
NYSE Arca, Inc., 48571–48573

Surface Transportation Board
NOTICES
Railroad services abandonment:
Blue Mountain & Northern Railroad Co., 48581

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Transportation Security Administration
PROPOSED RULES
Transportation Worker Identification Credential Program; maritime sector implementation:
Commercial driver's license hazardous materials endorsement, 48527–48528

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48581–48582

Separate Parts In This Issue

Part II
Treasury Department, Internal Revenue Service, 48590–48623

Part III
Interior Department, Indian Affairs Bureau, 48626–48645

Part IV
Millennium Challenge Corporation, 48648–48693

Part V
Environmental Protection Agency, 48696–48750

Part VI
General Services Administration, 48752–48765

Part VII
Labor Department, Employee Benefits Security Administration, 48768–48792

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
3301 48447

10 CFR
1010 48447

14 CFR
25 (4 documents) 48449, 48451, 48453, 48457
39 (4 documents) 48461, 48463, 48466
97 48470

Proposed Rules:
39 (3 documents) 48487, 48490, 48493
71 48495

18 CFR

Proposed Rules:
35 48496
410 48497

25 CFR

Proposed Rules:
224 48626

26 CFR
1 (2 documents) 48473, 48474

Proposed Rules:
1 48590

33 CFR
100 48475
117 48477
165 48477

Proposed Rules:
101 48527
103 48527
104 48527
105 48527
106 48527
117 48498
125 48527

40 CFR
300 48479

Proposed Rules:
49 48694
51 48694
261 48500
262 48500

45 CFR

Proposed Rules:
1621 48501

46 CFR
1 48480
5 48480
10 48480
12 48480
13 48480

Proposed Rules:
10 48527
12 48527
15 48527

47 CFR

Proposed Rules:
1 48506
2 48506
6 48506
7 48506
9 48506
13 48506
20 48506
22 48506
24 48506
27 48506
68 48506
73 48506
74 48506
78 48506
80 48506
87 48506
90 48506
95 48506
97 48506
101 48506

49 CFR

Proposed Rules:
1515 48527
1570 48527
1572 48527

50 CFR
622 48483
635 48483
679 (2 documents) 48483, 48485

Rules and Regulations

Federal Register
Vol. 71, No. 161
Monday, August 21, 2006

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

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

DEPARTMENT OF ENERGY

5 CFR Part 3301

10 CFR Part 1010

RINs 1990–AA19 and 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Energy and Residual Department Standards Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (Department or DOE), with the concurrence of the Office of Government Ethics (OGE), published an interim final rule on July 5, 1996, to establish standards of ethical conduct, applicable to employees of the Department, that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics, and to revise the Department's residual standards regulation. The rule requires Department employees to document notices of disqualification and withdrawals of such notices in writing. It also requires that Department employees obtain the written approval of their immediate supervisor and the Department's designated agency ethics official or such official's designee prior to engaging in certain outside employment. The Department now discusses comments received in response to the interim final rule, and adopts that rule as final with certain changes to the Department's residual standards previously issued.

DATES: This final rule is effective September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Sue E. Wadel, Deputy Assistant General Counsel for Standards of Conduct, Office of the Assistant General Counsel for General Law, GC–77, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–1522.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) (57 FR 35006). The Standards, codified at 5 CFR Part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations that the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of the Standards.

The interim final rule published for comment on July 5, 1996 (61 FR 35085) by the Department, with OGE concurrence, established supplemental DOE regulations under 5 CFR 2635.105, and the Department, in the same rulemaking document, revised its residual standards regulation at 10 CFR part 1010. The Department determined that the supplemental rule was a necessary supplement to the Standards because it addressed ethical issues unique to the Department, and was therefore necessary and appropriate to fulfill the purposes of the Standards. The rule, codified in new chapter XXIII of 5 CFR, consisting of part 3301, provided a 60-day comment period and invited comments by agencies and the public. Comments were received from two (2) sources. In a separate rulemaking action, on June 3, 1998 (63 FR 30109), the Department published a final rule that revised the part 1010 authority citation, amended § 1010.102, and deleted old § 1010.105. The final rulemaking today makes no further changes to the current regulations at 10 CFR part 1010 and 5 CFR part 3301.

On March 1, 2000, the National Nuclear Security Administration (NNSA) was established as a separately organized entity within the Department of Energy. This rule applies to all Department employees, including those of NNSA.

II. Summary of Comments

Both sets of comments concerned 5 CFR 3301.103, which requires that Department employees obtain the written approval of their immediate supervisor and the Department's designated agency ethics official or that official's designee (ethics counselor) prior to engaging in certain outside employment. The comments addressed the prior approval requirement (§ 3301.103(a)) and the definition of ''employment'' (§ 3301.103(c)). No comments were received on § 3301.102 requiring Department employees to document notices of disqualification and withdrawals of such notices in writing. Additionally, no comments were received on the revisions to the Department's residual part 1010 standards regulation in its own CFR title and the addition of cross-references to the new provisions.

Section 3301.103(a) Prior Approval Requirement

The comments suggested the rule is overly broad and unenforceable. It was specifically stated that: (a) The rule should cover only those employees in ''sensitive'' positions because they are the only employees whom the rule affects, thus preventing an otherwise unwarranted invasion of privacy; (b) the rule should not apply to unpaid employment because unpaid employment would not ''prejudice'' an employee; (c) the rule, interpreted broadly, would encompass many types of employment that are not the type the rule seeks to prohibit; and (d) the rule is unenforceable because there would be no way of ensuring compliance with the rule.

The Department has determined that it would not be prudent to narrow the scope of the rule and that, in light of the purpose of the rule, the fear it would be unenforceable is not valid. The rule is designed to help ensure that Department employees do not inadvertently violate the criminal statutes and Federal regulations governing outside activities of Federal employees. Determining whether certain outside employment is prohibited is very fact-specific, and does not depend upon an employee's position or on whether outside employment is unpaid. The Department does not believe it is possible to craft a straightforward regulation that would plainly address, in advance, the myriad of situations which could be considered to be employment and to identify which of those situations would be prohibited

or in conflict with the Standards. It is the Department's view that whatever burden the prior approval requirement may impose upon some employees, it is more than compensated for by the prevention of violations of the applicable statutes and Federal regulations. It should be noted that the prior approval requirement is not designed to arbitrarily deny Department employees permission to engage in outside employment. In fact, the regulation makes clear that a request for approval will be granted unless it is determined that the outside employment involves conduct prohibited by statute or regulation. See 5 CFR 3301.103(b). In practice, since the interim final regulation has been promulgated, the vast majority of requests for approval to engage in outside employment have been routinely granted.

The comments also maintained that the approval process contained in the rule, requiring approval to be in writing and obtained from an employee's immediate supervisor and ethics counselor, is unduly burdensome. It was specifically recommended that an employee's immediate supervisor be authorized to provide the necessary approval, and that verbal approval be allowed.

The Department has not adopted these recommendations. DOE's ethics counselors are uniquely qualified to analyze, interpret, and apply the relevant statutes and regulations. Supervisors generally will not be able to make determinations regarding whether a specific fact situation may violate a statute or regulation. Further, the involvement of Department ethics counselors helps to ensure consistency in the interpretation and application of those statutes and Federal regulations. Written approval is the most effective way of documenting the approval process and it protects both the Department and the employee. Written approval can, as a practical matter, be more effectively relied upon by the Department in the event an employee seeks clarification about advice provided to him or her regarding outside employment, and by the employee in the event there is a dispute concerning the legality of an employee's outside employment activities. Disciplinary action for violating the Standards or these supplemental regulations will not be taken against an employee who has in good faith relied upon the advice of an ethics counselor, provided the employee, in seeking such advice, has made full disclosure of all relevant facts and circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an ethics counselor cannot ensure that the employee will not be prosecuted under that statute; however, good faith reliance on the advice of an ethics counselor is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. See 5 CFR 2635.107(b).

Finally, one of the comments noted professional employees are governed by professional ethics rules and, therefore, the imposition of additional limitations is unnecessary and likely to result in conflicting ethical regulations. All employees of the executive branch, whether or not professional, must comply with the Standards and any other applicable statutes and regulations. Professional ethical obligations an employee may be subject to may be considered by the employee in addition to the applicable statutes and regulations, but shall not, under any circumstances, relieve an employee of his or her obligations under applicable statutes and regulations.

Section 3301.103(c) Definition of Employment

The regulation defines ''employment'' to exclude ''participating in the activities of a nonprofit, charitable, religious, public service or civic organization, unless such activities involve the provision of professional services or are for compensation.'' One set of comments objected to the exclusion of ''professional services'' from this exception to the definition of ''employment'' for the following reasons: (a) It would ''automatically eliminate all of our professional workers from all public service work,'' creating a socially undesirable outcome; (b) it ''constitutes an unfair labor practice, for, without any negotiation, it bars the union from using its professional members for standard collective bargaining activities;'' and (c) it is ''unnecessary'' because ''professional service provided by DOE professionals to public organizations is not related at all to their positions as government employees.''

Comments (a) and (b) exhibit a clear misunderstanding of the language of the rule. The definition of employment does not prohibit professionals from engaging in public service work or bar the union from using its professional members for standard collective bargaining activities; rather, it simply states that if an employee's involvement in public service work includes the provision of professional services, or is for compensation, then the employee may not rely on the exception and must, as is required for any other type of outside employment, receive prior written approval. Further, determining whether certain outside employment is prohibited is very fact-specific and does not necessarily depend upon the relationship between an employee's position and an employee's outside activity.

III. Matters of Regulatory Procedure

Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), as amended by Executive Order 13258, Amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385, February 28, 2002). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs, Office of Management and Budget.

Review Under Executive Order 12988

Section 3 of Executive Order 12988, Civil Justice Reform, (61 FR 4729, February 7, 1996) instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations describe any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

Review Under Executive Order 13132

Executive Order on Federalism 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

Review Under Executive Order 13084

Under Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This rule would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

Review Under the Administrative Procedure Act and the Regulatory Flexibility Act

The authorizing legislation for this rulemaking does not require notice and comment rulemaking. Moreover, this final rule relates solely to internal agency organization, management, or personnel, and as such, is not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553). Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 603).

Review Under the National Environmental Policy Act

This final rule adopts as final the Department's interim regulations on standards of conduct. It will not change the environmental effects of the regulations being amended. The Department has therefore determined that the rule is covered under the Categorical Exclusion found at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings interpreting or amending an existing rule that do not change the environmental effect thereof. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for executive agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

Review Under the Paperwork Reduction Act

This final rule does not impose a ''collection of information'' requirement, as defined in 44 U.S.C. 3502(3).

Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. 5 U.S.C. 801. That reporting requirement does not apply to this final rule because it falls within a statutory exception for rules relating to agency management or personnel. 5 U.S.C. 804(3)(B).

List of Subjects

5 CFR Part 3301

Conduct standards, Conflicts of interests, Ethical conduct, Government employees.

10 CFR Part 1010

Conduct standards, Conflicts of interests, Ethical conduct, Government employees.

Issued in Washington, DC, on August 2, 2006.

David R. Hill,

General Counsel, Department of Energy.

Approved: August 10, 2006.

Robert I. Cusick,

Director, Office of Government Ethics.

■ Accordingly, the interim final rule adding 5 CFR part 3301 and revising 10 CFR part 1010, that was published at 61 FR 35085 on July 5, 1996, is adopted as a final rule with the changes published at 63 FR 30109 on June 3, 1998.

[FR Doc. E6–13736 Filed 8–18–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM343; Special Conditions No. 25–322–SC]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

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

DATES: *Effective Date:* The effective date of these special conditions is July 20, 2006.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c).

The request was for an extension to a 7-year period, using the date of the

initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

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

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

Type Certification Basis

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

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

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

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

Discussion of Novel or Unusual Design Features

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

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

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

Discussion of Comments

Notice of Proposed Special Conditions No. 25–06–04–SC, pertaining to airplane jacking loads for the Airbus A380 airplane, was published in the **Federal Register** on March 28, 2006. A single comment which supports the intent and language of the special conditions, as proposed, was received from the Airline Pilots Association (ALPA). Accordingly, the special conditions are adopted as proposed.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus A380–800 airplane.

Part I

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

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

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

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

b. The limit horizontal load at the jacking point undercarriage unit may not be less than the higher of that derived from the above rational analysis or 0.33 times the limit static vertical

reaction found with the undercarriage unit in question supported at the jacking points with the aircraft in the unjacked position. This load must be applied in combination with the vertical loads arising from the analysis of (a) above.

Part II

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13789 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM342; Special Condition No. 25–323–SC]

Special Conditions: Airbus Model A380–800 Airplane, Extendable Length Escape System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

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

DATES: *Effective Date:* The effective date of these special conditions is July 20, 2006.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

Type Certification Basis

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

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

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

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

Discussion of Novel or Unusual Design Features

The Airbus Model A380–800 airplane has 16 emergency exits and 16 escape slides to be used for evacuation of passengers in case of emergency. Of these, 14 are fixed-length escape slides, and two (at door M1) are extendable length escape slides. The extendable length escape slides have a 16-foot extension packed at the toe.

Typically, airplanes have fixed length escape slides. However, it was not possible to use fixed length escape slides for the A380 door M1 because of the extreme difference between normal sill height and high sill height associated with collapse of some of the

landing gear in an emergency. Some combinations of landing gear collapse could cause the airplane to tip back on its tail.

On the door, there is an electronic sensor that evaluates the attitude of the airplane and determines whether the extension is needed. During normal operation, the extension remains packed at the toe end of the escape slide. When the extension is needed, the system sends a signal to a squib that allows the extension to be inflated during deployment. If the system detects that the slide extension has failed to deploy, a warning is activated that tells the flight attendants that the slide should not be used. The warning will also activate—if after initial deployment of the slide without the extension deploying—the attitude of the airplane changes to the extent that the extension should be deployed. The slide system design cannot accommodate deploying the extension after deployment of the main body of the slide.

The performance requirements for escape systems are contained in 14 CFR 25.810 and address several abnormal operating conditions as well as failure conditions and reliability. The requirements of § 25.810 remain applicable for the slide in the unextended mode, and for the most part, in the extended mode. The special conditions indicate where the requirements differ from the requirements of § 25.810 for the slide in the extended mode.

The extension is intended only for use at high sill heights. A typical fixed-length slide operating at high sill height does not satisfy all of the performance requirements of § 25.810, but its variations in performance are understood and largely predictable. Certain performance criteria are valid regardless of sill height, whereas other aspects of performance can be expected to decline at higher sill heights. With an extendable slide, there is a step change in configuration and potentially a step change in performance.

Therefore, special conditions are needed to ensure acceptable performance in the extended mode. Section 25.810 specifies the basic performance requirements for escape slides including wind testing, repeatability testing, and testing at adverse sill heights. Section 25.1309(a) requires that systems perform under foreseeable operating conditions, such as extreme temperatures, and a demonstration that the system design is appropriate for its intended function. Standards for the equipment itself are contained in Technical Standard Order C69c and contribute to a satisfactory installation.

Existing 14 CFR part 25 regulations governing the certification of the A380 do not adequately address certification requirements of an extendable length escape slide. The FAA is proposing special conditions to ensure that an extendable length escape slide performs adequately in both the unextended and the extended configuration.

Technical Standard Order C69c addresses many detailed aspects of escape slide performance that are not specified in 14 CFR 25 but are generally considered essential to assuring adequate escape slide performance. These special conditions supplement the requirements of 14 CFR 25, for the slide in its extended mode. However, because of the novel nature of this design, the special conditions will require that the escape slide receive TSO authorization or satisfy an equivalent standard.

Wind tests are typically conducted only on fixed length slides at normal sill height. Since the regulations require that the 25 knot standard is met at the most critical wind angle, escape slides usually exceed 25 knots performance at other than the critical angle. The same is expected to be true of the slide in its extended mode, but some reduction in the required wind velocity is appropriate since the slide will be in an abnormal condition. Available data indicates that a value of 22 knots is appropriate to cover the slide in its extended mode at normal sill height. This corresponds to roughly 75% of the wind energy required for the slide in its normal attitude and will ensure that the slide can function in its extended mode at least as well as a fixed length slide under similar abnormal conditions.

The special conditions also specify a rate for evacuation of passengers which is consistent with that of fixed length escape slides.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–06–03–SC, pertaining to the extendable length escape system for the Airbus A380 airplane, was published in the **Federal Register** on March 29, 2006. Comments were received from The Boeing Company and the Airline Pilots Association (ALPA).

Requested change No. 1: ALPA states, ''The proposed language of * * * Special Condition [3] appears to address only one aspect of the current rule (wind velocity). The remaining elements of 25.810(a)(1)(iv) should continue to apply.'' ALPA adds, ''Given that FAR part 25.810 provides that non-extendable slides have a 25 knot wind requirement at the most critical angle (with all gear extended), those same requirements must exist for the A380 extendable slide in its normal configuration or an equivalent wind requirement in its extended configuration.'' According to the commenter, ''* * * aircraft may be operated in winds greater than 25 knots, which suggests that a zone of risk remains unaddressed * * *. The special condition should intend to ensure the slide is able to perform the same point as required for other slides in service, which means that the slide and door sill should be configured as expected in actual service, and then the 25 knot wind should be applied at the most critical angle.

FAA response: The purpose of Special Condition 3 is to specify a reasonable criterion for the slide in an abnormal condition. There is no such criterion for typical fixed length escape slides, but they can be presumed to have less tolerance to wind when at adverse attitude than at normal attitude. Therefore, applying the same criterion to the slide in both the unextended and extended modes would be beyond what is done for a typical slide. The specific 22 knot criterion was arrived at empirically and is consistent with, if not beyond, the capabilities of a typical slide when at adverse attitude. Regarding the other aspects of § 25.810(a)(1)(iv), see the FAA response to Requested change No. 2.

Requested change No. 2: The Boeing Company also comments on proposed Special Condition 3, suggesting that the text be changed to be similar to that in § 25.810(a)(1)(iv).

FAA response: The FAA agrees and has changed the wording to align more closely with the language of § 25.810(a)(1)(iv).

Requested change No. 3: ALPA points out that proposed Special Condition 5 specifies that a slide extension warning be available for ten minutes after the airplane comes to rest, but does not specify a minimum activation time for the warning. ALPA suggests that the special condition require that ''* * * the 'slide extension' warning must be such that the cabin crew is immediately made aware of a non usable slide * * *.''

FAA response: The FAA agrees and, accordingly, has changed the wording of Special Condition 5.

Requested change No. 4: The Boeing Company comments on proposed Special Condition 2, as follows:

''The required evacuation rate of 45 persons per minute should be specified as the combined *average* rate of all test

runs to ensure that it will not be applied as a minimum threshold for each test run.

FAA response: Special Condition 2 requires that Airbus demonstrate that the extendable length escape slide can achieve an evacuation rate of 45 persons per minute, but does not specify that any and every evacuation test must achieve that rate. Using the average of tests may be one way to demonstrate the specified rate, but it is not necessary to specify that as the only means.

Requested change No. 5: Boeing further comments that proposed Special Condition 2 should specify that, ''with the exception of the sill height and the required average evacuation rate for this test series, all the other test conditions in Technical Standard Order TSC–C69C, paragraph 5.4, (Basic Test Conditions), apply.''

FAA response: This matter is addressed in Special Condition 1, which specifies that ''The extendable escape slide must receive TSO C69c authorization or the equivalent.''

Except for the changes discussed above, the special conditions are adopted as proposed.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the provisions of 14 CFR part 25, the following special conditions apply:

1. The extendable escape slide must receive TSO C69c authorization or the equivalent.

2. In addition to the requirements of § 25.810(a)(1)(iii) for usability in conditions of landing gear collapse, the deployed escape slide in the extended mode must demonstrate an evacuation rate of 45 persons per minute per lane at the sill height corresponding to activation of the extension.

3. In lieu of the requirements of § 25.810(a)(1)(iv), the escape slide must be capable of being deployed in the extended mode, and with the assistance of one person, remain usable in 22 knot winds directed from the critical angle, with the airplane on all its landing gear.

4. Pitch sensor tolerances and accuracy must be taken into account when demonstrating compliance with § 25.1309(a) for the escape slide in both the extended and unextended modes.

5. There must be a ''slide extension'' warning such that the cabin crew is immediately made aware of a non usable slide (i.e., the main slide has deployed and the door sill height is such that the extension should be deployed but cannot be deployed), even if this is due to the airplane attitude changing during the evacuation. The ability to provide such a warning must be available for ten minutes after the airplane is immobilized on the ground.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13780 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM319; Special Conditions No. 25–321–SC]

Special Conditions: Airbus Model A380–800 Airplane, Crashworthiness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

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

DATES: *Effective Date:* The effective date for these special conditions is July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c).

The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the

part 25 certification basis for the Model A380–800 airplane, and no changes are required based on the new application date.

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

Type Certification Basis

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

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

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

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

Discussion of Novel or Unusual Design Features

With its complex configuration, including a full-length double deck, the Model A380 airplane has a novel and unusual design relative to large transport category airplanes which have been previously certificated under 14 CFR part 25. The A380 should provide a level of crash survivability which is at least equivalent to that demonstrated for such conventional large transport airplanes. However, its size and configuration could cause the airplane to be subject to effects of scale that decrease the ability of the occupants to survive a crash landing, compared to the occupants of those conventional airplanes.

Currently, 14 CFR 25.561 contains design load conditions covering emergency landings or minor crash landings for the local structures which support passengers, equipment, cargo, and other large items of mass in the passenger compartment. However, neither 14 CFR 25.561 nor any other part 25 requirements address the structural capability of the airframe as a whole in a crash landing. Service experience indicates that-even without specific regulatory requirements-the airframes of conventional transport category airplanes show reasonable structural capability in crash landings. Therefore, in the past we have not considered it necessary to specify design load conditions addressing the structural capability of the airplane as a whole in a crash landing.

The FAA, however, has no information to indicate whether an airplane the size and configuration of the A380 would provide reasonable airframe structural capability in a crash landing without a specific regulatory requirement. Therefore, the FAA is proposing special conditions which specify testing and analysis to ensure that the Model A380 provides a level of crash survivability equivalent to that of conventional large transport category airplanes. These special conditions address only the vertical loading of the fuselage. The longitudinal loading is not significantly different from that of a conventional transport category airplane and thus is adequately addressed by part 25.

For the special conditions, it is necessary to establish a reference point to compare the structural capability of the A380 airplane with the structural capability of current generation airplanes in a crash. This reference point is referred to as the ''Limit of Reasonable Survivability.'' It is defined—in terms of the vertical descent rate—as the level of structural degradation that would lead, either directly or by exceedance of physiological limits of the occupants, to a significant reduction in the probability of survival in an otherwise survivable incident. (An incident can be unsurvivable due to a non-structural cause, such as a fire. An otherwise survivable incident, then, is one in which no fire or other cause makes the incident unsurvivable.) We intend that this Limit of Reasonable Survivability be determined first for the current generation of the applicant's airplanes and then for the A380 to show that the latter has equal or better characteristics at the same vertical descent rate.

The special conditions contain a provision to ensure that the supporting airframe structure is strong and rigid enough to provide survivable living space and to hold seats, overhead bins, and other items of mass in place, even if the local attachment hardware is designed to exceed the minimum strength required by § 25.561. To provide this protection, the special conditions specify that the airframe structure must be able to support the loads imposed by items of mass, assuming that their local supporting structure does not fail, thus relieving the load on the supporting airframe structure. This assumption will ensure that the airframe structure will not collapse, even if the strength of the local attachment for items of mass exceeds the strength required by § 25.561. Since it is the airframe as a whole and its survivable living space that are the subject of these special conditions, the FAA does not intend to increase the strength requirements of § 25.561 by special condition. Therefore, the special conditions state explicitly that the attachments of items of mass need not be designed for static emergency landing loads in excess of those specified in § 25.561.

Since larger airframe structures typically have more volume within which to absorb energy, they normally provide occupants with reasonable protection from crash loads. Therefore, the effects of the A380 design on occupant loads are not expected to be significant. In order to confirm that this assumption is correct, these special conditions require an assessment of the effect of the design on the occupant loads. For the purposes of these special conditions, an analytical tool known as the Dynamic Response Index (DRI) is used to make the assessment. The DRI was developed through research and is documented in USAA VSCOM TR 89–D–22B, ''Aircraft Crash Survival Design Guide, Volume II, Aircraft Design Crash Impact Conditions and Human Tolerance.'' The DRI approximates the effect of an impact on spinal load. Based on the results of the assessment using DRI, any additional, detailed occupant load considerations can be established.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–05–14–SC, pertaining to crashworthiness requirements for the Airbus A380 airplane, was published in the **Federal**

Register on August 9, 2005 (70 FR 46102). Comments were received from the Airline Pilots Association (ALPA), the Association of Flight Attendants (AFA), and the Boeing Company.

Requested change 1: ALPA addresses the first sentence in Section b. of the special conditions which specifies that, ''The occupants will be protected from the release of seats, overhead bins, and other items of mass due to structural deformation of the supporting structure * * * .''

ALPA states,

''Unless there is a procedure/system in place in revenue service that prevents the seat and bin from being loaded in excess of their rated limit, seats and bins under the requirements of Section b. must be tested within the full range of likely loads, not simply up to their rated limit. Overhead bins are notorious for failing in crash scenarios where the remainder of the cabin remains intact. In addition, the seat requirements for testing with only a 50th percentile male should be reconsidered to evaluate the full range of occupants, or at least the 5th to 95th percentile of humans.''

FAA response: Accommodating the changes requested by ALPA would be beyond the scope of this rulemaking. The purpose of the special condition is to assure that the large size and full length double deck configuration of the A380 design do not degrade the survivability characteristics of the A380 fuselage shell compared to designs for conventional large transport category airplanes. The purpose is not to create a higher safety standard for the A380.

To accomplish a proper comparison, the mass of items and the weight of passengers are defined in the same way as they would be for conventional airplane designs. Overhead bins are required to be evaluated for the rated bin load, and seats are required to be evaluated for the mass of a 50th percentile male occupant. To adopt a procedure to prevent a seat or bin from being loaded in excess of its rated design or to adopt a higher passenger weight for the evaluation of seat strength would represent a difference from the certification criteria used for conventional large transport category airplane designs.

Since the A380 is not unique or unusual with regard to these certification criteria, the requested changes are considered to be beyond the scope of this rulemaking. Accordingly, we have made no changes to the special conditions, as proposed.

Requested change 2: AFA recommends deleting Section c. of the special condition and all reference to use of the DRI as a measure of ''physiological limits'' of a crash. Instead, AFA suggests relying on Sections a., b., and d. for demonstrations of survivability.

AFA supports its recommendation with a detailed analysis of the development and use of the DRI and reaches the following conclusion:

> ''The DRI is useful, preferably with other criteria, to predict *minor to moderate injury* in ejection seats with occupants who are well restrained in the vertically seated posture, and possibly in crashes. The DRI has never shown the ability to predict survival (or anything else) in a crash that could *cause severe but not fatal injury*.''

FAA response: The DRI is being used as a metric to compare the occupant dynamic response in the Model A380 with that in other airplane designs; it is not being used as a criterion of injury. Section c. of the special condition states that the ''Dynamic Response Index experienced by the occupants will be no more severe than that experienced on conventional large transport airplanes.'' This comparison does not involve establishing an injury criterion for DRI. The FAA considers the DRI to be an appropriate metric for the comparative analysis required by the special condition. Since it is only the vertical loading that is simulated in the analysis, the one degree of freedom spring-mass model on which DRI is based is acceptable to the FAA. Accordingly, no change has been made to Section c. of the special condition, as proposed.

Requested change 3: AFA states, ''The proposed special condition[s] envision a simple vertical impact as the environment to compare the crashworthiness of the A380–800 airplane with that of 'conventional large transport airplanes.' The 'conventional large transport airplane' is not specifically designated.'' [1] AFA suggests that a simple vertical crash impact is insufficient to judge crashworthiness and recommends that, ''The impact conditions in the Special Conditions should reflect a representative crash environment that includes at least both vertical and longitudinal components. The conditions used in the Jamshidiat study (op. cit.) would be appropriate.'' According to AFA, the impact conditions studied by Jamshidiat et al. were much more realistic and severe than the simple vertical impact proposed by the special condition.

AFA also discusses the Department of Defense (DOD) Crash Protection Handbook, which summarizes critical findings of past crashworthiness studies. One of those findings is of particular concern for the A380–800 aircraft:

> ''For larger aircraft, the earth-scooping criteria associated with the low angle impact of Mil–Std–1290 were shown to be impractical. This conclusion was based on the fact that the requirement, which was based on G loading, would impose a severe weight penalty on large airframes (over approximately 20,000 pounds). The criteria described in Mil–Std–1290 were that, 'The nose section shall be designed to preclude any earth plowing and scooping tendency when the forward 25 percent of the fuselage has a uniformly applied local upward load of 10g and a rearward load of 4g or the ditching loads of Mil–A–8865A, whichever is the greatest.' ''

AFA states, ''Because of its size, it is doubtful if the A380–800 provides adequate protection against earth scooping. Earth scooping can disrupt the continuity of the bottom of the aircraft (e.g., the British Midlands 737 crash) and result in severe compromise of living space, and thus of survivability. It must be considered in any evaluation of crashworthiness.''

FAA response: The FAA agrees that a simple vertical crash impact is insufficient to judge overall crashworthiness, because (1) there is no agreed standard to judge an acceptable level of crashworthiness, and (2) the behavior of airplanes during minor crashes is highly complex and variable. However, that does not mean that meaningful crashworthiness evaluations cannot be made by isolating certain airplane characteristics that contribute to post crash survival, such as the ability of a fuselage to withstand crushing or collapse due to the vertical forces resulting from impact with the ground. This is the effect addressed by the A380 special condition.

While there are many factors that may influence the survivability of the fuselage, the FAA considers the ability of a fuselage to survive a vertical drop without crushing or collapse to be a major factor. In fact, the FAA has conducted vertical drop testing of actual fuselage sections for this very purpose, that is, to determine how current generation fuselages perform in a minor crash landing and to identify design features that affect their performance.

The demonstration required by this special condition is intended to show whether the A380, including the full length upper deck, is able to resist crushing or floor collapse in a vertical drop as well as other conventional large transport airplanes. The requirement to conduct this demonstration does not establish a higher level of safety for the A380. In terms of vertical descent rate,

[1] Airbus compared construction of the very large A380 to that of the ''conventional large'' A320 and A340 both of which are currently in production.

it provides for equivalence to the performance of existing large transport airplanes.

The FAA does not agree with AFA that the A380 analysis was overly unrealistic or has little value, compared to the study performed by Jamshidiat et al. The Jamshidiat study was performed for a different reason than this A380 special condition. Its purpose was to assess the effect of airplane size on the longitudinal and transverse acceleration loads experienced by occupants. The A380 special condition addresses the strength of the fuselage shell and its ability to avoid crushing due to vertical impact loading. The Jamshidiat study modeled the fuselage characteristics that are relevant for evaluating the longitudinal and transverse acceleration loads experienced by occupants. The A380 special condition addresses the characteristics of the fuselage construction that are relevant to its ability to avoid crushing. Therefore, the A380 special condition and the Jamshidiat study are complementary. In fact, the results of the Jamshidiat study support our assumption that the § 25.561 longitudinal accelerations are adequate for design of the A380 and, therefore, do not need to be addressed in the A380 special condition.

Finally, the FAA does not agree that the DOD crash handbook discussion of earth plowing/scooping indicates that it is doubtful that the A380–800 provides adequate protection against earth scooping. The comparison the DOD drew between large airplanes and small was between 737-size airplanes (typically greater than 140,000 pounds gross weight) and business jet or trainer size airplanes (typically smaller than 20,000 pounds gross weight), not between 737-size airplanes and A380-size airplanes (over 900,000 pounds gross weight).

We do not believe that any evidence indicates that the earth plowing/scooping behavior of an A380-size airplane will be more severe than for a 747-size airplane. In fact, a conclusion of the Jamshidiat report cited by AFA indicates that the opposite is probably true:

''The longitudinal crash deceleration was a function of the impact slope, the condition of the impact surface, the nature of obstacles and the relative radius of curvature of the fuselage cross section and the nose planform. The 747–400, with its larger radii of curvature and greater energy absorption of the lower fuselage structure has an inherent advantage over the 737–400 because obstacles do not follow scaling rules.''

The FAA agrees with this reasoning and by extension concludes that the A380 will have an inherent advantage over the 747 and can be expected to produce lower longitudinal crash decelerations because of its size.

Requested change 4: The Boeing Company suggests that the proposed special conditions be revised or withdrawn, stating the following:

''A requirement to show equivalency to an existing airplane is unprecedented and beyond the scope provided for by FAR 21.16 for Special Conditions. [Section] 21.16 allows special conditions to be issued 'to establish a level of safety equivalent to that established in the regulations.' It does not allow the FAA to issue special conditions to achieve a level of safety inherent in a past product design * * *''

''Existing Part 25 regulations already provide for the structural integrity and crashworthiness of the passenger cabin. To require the determination and comparison to other aircraft for the 'Limit of Reasonable Survivability' should be addressed with general rulemaking, as it is a general upgrade of the requirements that should apply to all aircraft types * * *. Since Part 25 already contains passenger static and dynamic survivability requirements, the upgrading of those requirements must come through general rulemaking and not special conditions.''

FAA response: The FAA does not agree with the commenter that this special condition is beyond the scope provided for by 14 CFR 21.16. That section states that

''If the Administrator finds that the airworthiness regulations of this subchapter do not contain adequate or appropriate safety standards for an aircraft * * * because of a novel or unusual design feature of the aircraft * * * he prescribes special conditions and amendments thereto for the product. The special conditions * * * contain such safety standards for the aircraft * * * as the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations.''

The level of safety established in the part 25 regulations for transport category airplanes is evidenced by the safety record demonstrated in service by airplanes so certificated. Although an overall airframe crashworthiness requirement has never been the subject of a part 25 regulation, current generation airplanes certificated under part 25 have exhibited a level of crashworthiness that the FAA considers to be adequate. These airplanes include those with a single deck and Boeing Model 747 with an upper deck which is considerably smaller (in both length and width) than that of the A380. The current part 25 regulations have no doubt contributed to this level of safety, even though no specific regulation has addressed the performance of the airframe in a crash landing, because the regulations have determined the airframe strength, which service experience has shown to be adequate.

The relevant novel or unusual design features of the A380 vis-à-vis airframe crashworthiness are its size, gross weight, and full length double deck configuration, which are without precedent in the current commercial transport airplane fleet. This special condition requires a demonstration that the A380 provides a level of crash survivability equivalent to that of conventional large transport airplanes. Therefore, the FAA does not agree with the Boeing Company that this special condition is beyond the scope provided for by § 21.16.

Further, the FAA does not agree that the part 25 regulations already provide for the structural integrity and crashworthiness of the passenger cabin for the Airbus A380. The existing regulations address the seats, restraint of passengers, equipment, cargo and other large masses contained in the passenger cabin and their attachment to the airframe, so as to avoid failure of structure which would release these items in the cabin during a minor crash landing and cause injury or block emergency escape routes. They do not, however, address the crashworthiness of fuselage structure as a whole and its ability to avoid collapse in a minor crash landing.

Finally, the FAA does not consider it necessary to address other airplane designs with general rulemaking. It is the unique characteristics of the A380 that motivates this special condition. No other transport airplane is as large or heavy as the A380 or has a full length double deck, and, therefore, there is no need for general rulemaking.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of §§ 25.561, 25.562, 25.721, and 25.785, the following special condition applies:

It must be demonstrated that the Model A380 provides a level of crash survivability equivalent to that of conventional large transport airplanes. This may be achieved by demonstrating by test or validated analysis that—at impacts up to a vertical descent rate representing the Limit of Reasonable Survivability—the structural capability of typical fuselage sections is equal to or better than that of a conventional large transport airplane. (The Limit of Reasonable Survivability is defined as the level of structural degradation that would either directly or by exceedance of physiological limits of the occupants lead to a significant reduction in the probability of survival in an otherwise survivable incident.) The results of this demonstration must show the following:

a. Structural deformation will not result in infringement of the occupants' normal living space.

b. The occupants will be protected from the release of seats, overhead bins, and other items of mass due to structural deformation of the supporting structure. That is, the supporting structure must be able to support the loads imposed by these items of mass, assuming that they remain attached during the impact event, and the floor structure must deform in a way that would allow them to remain attached. However, the attachments of these items need not be designed for static emergency landing loads in excess of those specified in § 25.561.

c. The Dynamic Response Index experienced by the occupants will not be more severe than that experienced on conventional large transport airplanes. (The Dynamic Response Index is described in USAA VSCOM TR 89–D–22B, ''Aircraft Crash Survival Design Guide, Volume II, Aircraft Design Crash Impact Conditions and Human Tolerance.'')

d. Cargo loading of the fuselage for this evaluation accounts for variations that could have a deleterious effect on structural performance.

Issued in Renton, Washington, on July 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13796 Filed 8–18–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM341; Special Conditions No. 25–324–SC]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

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

DATES: *Effective Date:* The effective date of these special conditions is July 20, 2006.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

Type Certification Basis

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

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

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

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

Discussion of Novel or Unusual Design Features

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

For a five point suspension system, like that of the A380, load sharing between landing gear must be determined in a rational manner considering the flexibility of the airplane. Therefore, the landing and ground load requirements of 14 CFR part 25 are not valid, and special conditions specifying the load conditions appropriate to the multi-leg landing gear on the A380 are necessary.

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

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

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

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

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

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

Discussion of Comments

Notice of Proposed Special Conditions No. 25–06–02–SC, pertaining to loading conditions for multi-leg landing gear for the Airbus A380 airplane, was published in the **Federal Register** on March 23, 2006 (71 FR 15345). A single comment which supports the intent and the language of the special condition, as proposed, was received from the Airline Pilots Association (ALPA). The FAA made a slight change to the text of Special Condition B.5.(b)(1)(ii) to clarify that 4 different pivoting conditions must be considered. Except for that change, the special conditions are adopted as proposed.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus A380–800 airplane.

A. Landing Conditions

1. Landing Load Conditions and Assumptions

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

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

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

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

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

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

(1) Landing gear dynamic characteristics.

(2) Spin-up and spring back.

(3) Rigid body response.

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

(5) Each approved tire with nominal characteristics.

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

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

2. Symmetric Landing Load Conditions

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

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

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

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

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

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

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

(b) *Not applicable to A380.*

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

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

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

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

(4) For aircraft with more than two main landing gear or more than two wheels per main landing gear unit, each intermediate attitude that may be critical.

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

3. One-gear Landing Conditions

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

(a) Not applicable to the A380.

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

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

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

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

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

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

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

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

4. Side Load Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Ground Handling Conditions

1. Ground Handling Conditions

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

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

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

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

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

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

2. Taxi, Takeoff and Landing Roll

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

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

3. Braked Roll Conditions

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

(a) *Not applicable to A380.*

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

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

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

(c) An airplane equipped with a nose gear must be designed to withstand the loads arising from the dynamic pitching motion of the airplane due to sudden application of maximum braking force. The airplane is considered to be at design takeoff weight with the nose and main gears in contact with the ground, and with a steady-state vertical load factor of 1.0. The steady-state nose gear reaction must be combined with the maximum incremental nose gear vertical reaction caused by the sudden application of maximum braking force as described in paragraphs (b) and (e) of this paragraph.

(d) Not applicable to the A380.

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

4. Nose-wheel Yaw and Steering

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

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

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

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

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

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

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

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

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

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

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

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

5. Pivoting

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

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

(a) Not applicable to A380.

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

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

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

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

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

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

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

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

6. Reversed Braking

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

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

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

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

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

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

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

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

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

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

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

8. Shock Absorption Tests

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

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

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

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

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

(1) The weight and pitch attitude correspond to the condition from Special Condition A.2. that provides the maximum energy absorbed by the landing gear;

(2) Airplane lift is not greater than the airplane weight acting during the landing impact, unless the presence of systems or procedures significantly affects the lift;

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

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13779 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24101; Directorate Identifier 2005–NM–103–AD; Amendment 39–14718; AD 2006–16–18]

RIN 2120–AA64

Airworthiness Directives; Sandel Avionics Incorporated Model ST3400 Terrain Awareness Warning System/ Radio Magnetic Indicator (TAWS/RMI) Units Approved Under Technical Standard Order(s) C113, C151a, or C151b; Installed on Various Small and Transport Category Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD). The new AD is for Sandel Avionics Incorporated Model ST3400 TAWS/RMI units as described above. This AD requires installing a warning placard on the TAWS/RMI and revising the Limitations section of the airplane flight manual (AFM). This AD also requires installing upgraded software in the TAWS/RMI. This AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are issuing this AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

DATES: This AD becomes effective September 25, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 25, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Sandel Avionics Incorporated (Sandel), 2401 Dogwood Way, Vista, California 92081, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ha A. Nguyen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5335; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to Sandel Avionics Incorporated Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; installed on various small and transport category airplanes. That NPRM was published in the **Federal Register** on March 8, 2006 (71 FR 11549). That NPRM proposed to require installing a warning placard on the TAWS/RMI, installing upgraded software in the TAWS/RMI, revising the Limitations section of the airplane flight manual (AFM), and removing the placard and AFM revision after installing the software.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

One commenter, Boeing, expresses support for the NPRM.

Request for Clarification of Effect on Very High Frequency Omnidirectional Range (VOR) Receiver

One commenter, Cessna, requests that we clarify the unsafe condition. Cessna states that we are not specific regarding the effect of system decoding on the automatic direction finder (ADF) signal. Cessna asserts that greater focus is needed on VOR bearing error. Cessna has provided a suggested revision for the summary of the NPRM and requests that we include an explanation of the effect of the ADF on the unsafe condition.

We partially agree. The unsafe condition described in the AD affects only TAWS/RMI installations incorporating the RMI feature that are configured to receive bearing information from a VOR receiver interface via a composite video signal; there is no effect when the VOR receiver and the TAWS/RMI interface via ARINC 429. Further, this condition does not affect the TAWS/RMI bearing display when bearing information is being supplied from any ADF receiver. No technical change to the AD is needed in this regard; however, we have determined that the summary of the AD could more clearly specify the relationship of the required AFM revision to the required software upgrade. Therefore, we have clarified the summary of this AD to specify that the unsafe condition only occurs on TAWS/RMI units configured to interface with a VOR receiver via a composite video signal.

Request for Correction of Airplane Listings

One commenter, Aviation Data Research, requests corrections to Table 1 of the NPRM. The commenter asserts that several of the airplane manufacturers and models are incorrectly specified and expresses concern that, although this information is clearly designated as advisory rather than regulatory, the inaccuracies might allow a legal defense against compliance with the AD.

We partially agree. The described TAWS/RMI is subject to the requirements of this AD. Table 1 of the AD refers to airplanes equipped with the TAWS/RMI and, rather than being advisory, is part of the applicability of the AD. As indicated by the phrase, ''but not limited to,'' the TAWS/RMI is subject to this AD whether installed on any airplane by any manufacturer during production or by any entity subsequent to production. However, we agree that an AD should provide accurate information. Therefore, we have revised Table 1 of the AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Clarification of Summary

The summary of the NPRM states, in part, that one proposed requirement of the AD is ''removing the placard and AFM revision after installing the software.'' However, the AD does not require these actions. To prevent confusion, we have revised the summary of the AD by deleting the clause quoted above.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 300 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $19,500, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–16–18 Sandel Avionics Incorporated: Amendment 39–14718. Docket No. FAA–2006–24101; Directorate Identifier 2005–NM–103–AD.

Effective Date

(a) This AD becomes effective September 25, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sandel Avionics Incorporated (Sandel) Model ST3400 terrain awareness warning system/radio magnetic indicator (TAWS/RMI) units approved under Technical Standard Order(s) C113, C151a, or C151b; as identified in Sandel ST3400

Service Bulletin SB3400–01, Revision B, dated September 15, 2004; as installed on various small and transport category airplanes, certificated in any category, including, but not limited, to the airplane models listed in Table 1 of this AD.

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model(s)
Airbus	A300.
Avions Marcel Dassault—Breguet Aviation (AMD/BA).	Falcon 10.
Boeing	727, 737, 747.
Bombardier (LearJet)	24, 35, 36, 55.
British Aerospace (Operations) Limited	Jetstream Series 3101.
Cessna	208, 208B, 421C; 501, 525, 550, 560, 650, S550.
Embraer	EMB–120.
Dassault-Aviation	Mystere-Falcon 50, Mystere-Falcon 200.
Gulfstream	G–I, G–1159A (G–III).
Israel Aircraft Industries (IAI)	1124, 1125 Westwind Astra.
McDonnell Douglas	DC–10.
Piper	PA–31T2.
Raytheon	58; 1900D, 400; A36; BAe.125 Series 800A; HS.125 Series 600A/700A; Hawker 800–XP; 200, 300, 350, A200, B100, B200, B300, C90, C90A, C90B, E90, F90, MU–300–10.
Sabreliner	60 (NA–265–60).
Twin Commander	500–A, 695A.
Viking Air Limited	DHC–6.

Unsafe Condition

(d) This AD results from a report that an in-flight bearing error occurred in a Model ST3400 TAWS/RMI unit configured to receive bearing information from a very high frequency omnidirectional range (VOR) receiver interface via a composite video signal, due to a combination of input signal fault and software error. We are issuing this AD to prevent a bearing error, which could lead to an airplane departing from its scheduled flight path, which could result in a reduction in separation from, and a possible collision with, other aircraft or terrain.

Compliance

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

Installing Placard

(f) Within 14 days after the effective date of this AD: Install a placard on the TAWS/RMI which states, ''NOT FOR PRIMARY VOR NAVIGATION,'' in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

Revising Airplane Flight Manual (AFM)

(g) Within 14 days after the effective date of this AD: Revise the Limitations section of the applicable AFM to include the following statement: ''Use of ST3400 TAWS/RMI for primary VOR navigation is prohibited unless the indicator has 3.07 or A3.06 software or later.'' This may be done by inserting a copy of this AD into the AFM.

Updating Software

(h) Within 90 days after the effective date of this AD, in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004: Field-load the TAWS/RMI with updated software having revision 3.07 (for units having serial numbers (S/Ns) under 2000) or revision A3.06 (for units having S/Ns 2000 and subsequent). The placard and AFM limitations revision installed as required by paragraphs (f) and (g) of this AD may be removed after the software upgrade required by paragraph (h) of this AD has been accomplished.

Parts Installation

(i) As of 90 days after the effective date of this AD, no person may install, on any airplane, an ST3400 TAWS/RMI unit, unless it has been modified in accordance with Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use Sandel ST3400 Service Bulletin SB3400–01, Revision B, dated September 15, 2004 (only the first page of the document shows the date of the document), to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Sandel Avionics Incorporated (Sandel), 2401 Dogwood Way, Vista, California, 92081, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 3, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13447 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19676; Directorate Identifier 2004–NM–138–AD; Amendment 39–14717; AD 2006–16–17]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR Airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires determining the torque values of the screws that attach the seat tracks to the airplane, and corrective action if

necessary. This AD results from a report of undertorqued screws. We are issuing this AD to prevent improper torque of those screws, which in the case of a hard landing or a high deceleration impact condition could result in damage to the seat and possible subsequent injury to the passenger.

DATES: This AD becomes effective September 25, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 25, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–135 and –145 series airplanes. That supplemental NPRM was published in the **Federal Register** on May 26, 2006 (71 FR 30343). That supplemental NPRM proposed to require determining the torque values of the screws that attach the seat tracks to the airplane, and corrective action if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. This AD will affect about 539 airplanes of U.S. registry.

ESTIMATED COSTS

EMBRAER model airplane(s)	Work hours	Average labor rate/ hour	Parts	Cost/airplane
EMB–135 BJ	24	$80	Minimal	$1,920
Others	28	80	Minimal	2,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–16–17 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14717. Docket No. FAA–2004–19676; Directorate Identifier 2004–NM–138–AD.

Effective Date

(a) This AD becomes effective September 25, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; as identified in EMBRAER Service Bulletin 145LEG–53–0015, Revision 02, dated May 19, 2005, or 145–53–0049, Revision 03, dated August 10, 2005.

Unsafe Condition

(d) This AD was prompted by a report indicating that some screws that attach the passenger seat tracks were undertorqued. We are issuing this AD to prevent improper torque of those screws, which in the case of a hard landing or a high deceleration impact condition could result in damage to the seat and possible subsequent injury to the passenger.

Compliance

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

Inspection

(f) Within 5,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, determine the torque values of the applicable screws that attach the seat tracks to the airplane. Use the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–53–0015, Revision 02, dated May 19, 2005 (for Model EMB–135BJ airplanes), or Service Bulletin 145–53–0049, Revision 03, dated August 10, 2005 (for the remaining airplanes). For any screw that has a torque value outside the limits specified in the service bulletin: Before further flight, retorque the screw in accordance with the Accomplishment Instructions of the service bulletin. Although the service bulletins recommend applying torque seal to the heads of the screws, this AD does not require that action.

Actions Accomplished According to Previous Issues of Service Bulletins

(g) Actions accomplished according to the applicable service bulletin listed in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—ACCEPTABLE SERVICE BULLETINS

EMBRAER Service Bulletin	Revision	Date
145LEG–53–0015	01	September 1, 2004.
145–53–0049	01	September 1, 2004.
	02	November 26, 2004.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directive 2004–05–03R1, effective September 16, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the service bulletins identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER Service Bulletin	Revision level	Date
145–53–0049	01	September 1, 2004.
145–53–0049	02	November 26, 2004.
145–53–0049	03	August 10, 2005.
145LEG–53–0015	01	September 1, 2004.
145LEG–53–0015	02	May 19, 2005.

EMBRAER Service Bulletin 145LEG–53–0015, Revision 02, dated May 19, 2005, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1	02	May 19, 2005.
2–8	01	September 1, 2004.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA).

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

Issued in Renton, Washington, on August 3, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13653 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24173; Directorate Identifier 2005–NM–262–AD; Amendment 39–14652; AD 2006–12–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –300, and –300ER Series Airplanes

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on June 16, 2006 (71 FR 34808). The error resulted in a reference only to the left main fuel tank in paragraph (f)(2) of that AD rather than to both the left and right main fuel tanks. This AD applies to certain Boeing Model 777–200, –300, and –300ER series airplanes. This AD requires a one-time inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path, and repair if necessary; measurement of the bonding resistance between the fitting for the fuel feed tube and the front spar in the left and right main fuel tanks, and repairing the bonding if necessary; and application of additional sealant to completely cover the bulkhead fittings inside the fuel tanks.

DATES: Effective July 21, 2006.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2006–24173; the directorate identifier for this docket is 2005–NM–262–AD.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On June 8, 2006, the FAA issued AD 2006–12–26, amendment 39–14652 (71 FR 34808, June 16, 2006), for certain Boeing Model 777–200, –300, and –300ER series airplanes. The AD requires a one-time inspection of the first bonding jumper aft of the bulkhead fitting to detect damage or failure and to determine the mechanical integrity of its electrical bonding path, and repair if necessary; measurement of the bonding resistance between the fitting for the fuel feed tube and the front spar in the left and right main fuel tanks, and repairing the bonding if necessary; and application of additional sealant to completely cover the bulkhead fittings inside the fuel tanks.

As published, paragraph (f)(2) of that AD refers only to the left main fuel tank. The correct reference is ''left and right main fuel tanks.''

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains July 21, 2006.

§ 39.13 [Corrected]

■ In the **Federal Register** of June 16, 2006, on page 34810, in the third column, paragraph (f)(2) of AD 2006–12–26 is corrected to read as follows:

* * * * *

(2) Measure the bonding resistance between the fitting for the fuel feed tube and the front spar in the left and right main fuel tanks. If the bonding resistance exceeds 0.001 ohm: Before further flight, repair the bonding in accordance with the service bulletin.

* * * * *

Issued in Renton, Washington, on August 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13652 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25610; Directorate Identifier 2005–NM–260–AD; Amendment 39–14727; AD 2006–17–06]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Airplanes and Model ATR72–212A Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Aerospatiale Model ATR42–500 and ATR72–212A series airplanes, that requires repetitive inspections for cracking of the upper closing rib of the vertical fin, related investigative actions, and corrective actions if necessary. This new AD requires modifying the installation of the vertical leading edge fairing at the fin tip, which ends the repetitive inspections. This AD results from a report that rudder operation difficulties occurred on a Model ATR42–500 series airplane while the airplane was on the ground. We are issuing this AD to prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane.

DATES: This AD becomes effective September 5, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 5, 2006.

On July 22, 2004 (69 FR 33834, June 17, 2004), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

We must receive comments on this AD by October 20, 2006.

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

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

- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On June 7, 2004, we issued AD 2004–12–13, amendment 39–13672 (69 FR 33834, June 17, 2004), for certain Aerospatiale Model ATR42–500 and ATR72–212A series airplanes. That AD requires repetitive inspections for cracking of the upper closing rib of the vertical fin, related investigative actions, and corrective actions if necessary. That AD resulted from a report that rudder operation difficulties occurred on a Model ATR42–500 series airplane while the airplane was on the ground. We issued that AD to prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–12–13, the Direction Gonorale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that the manufacturer developed a terminating modification for the repetitive inspections of the existing AD.

Relevant Service Information

Avions de Transport Regional has issued Service Bulletin ATR42–55–0012, Revision 2, including Accomplishment Report, dated June 28, 2005 (for Model ATR42–500 airplanes); and ATR72–55–1004, Revision 3, including Accomplishment Report, dated September 23, 2005 (for Model ATR72–212 airplanes). The service bulletins describe procedures for modifying the installation of the vertical leading edge fairing at the fin tip. The modification includes doing a detailed inspection for cracking, misplacement, or deformation of the upper closing rib of the vertical fin.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–059, dated April 13, 2005, to ensure the continued airworthiness of these airplanes in France.

Avions de Transport Regional Service Bulletin ATR42–55–0012 refers to Avions de Transport Regional Service Bulletin ATR42–55–0011, dated September 26, 2002 (for Model ATR42–500 airplanes), as the appropriate source of service information for doing the detailed inspection. Avions de Transport Regional Service Bulletin ATR72–55–1004 refers to Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, dated November 13, 2002 (for Model ATR72–212 airplanes), as the appropriate source of service information for doing the detailed inspection.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane. This AD supersedes AD 2004–12–13 and retains the requirements of the existing AD. This AD also requires modifying the installation of the vertical leading edge fairing at the fin tip, which terminates the repetitive inspection requirements of the existing AD.

Change to Existing AD

This AD retains all requirements of AD 2004–12–13. Since AD 2004–12–13 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–12–13	Corresponding requirement in this AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change Made to Requirements of Existing AD

Paragraph (d) of the existing AD specifies making repairs using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent). The European Aviation Safety Agency (EASA) has assumed responsibility for the airplane models that are subject to this AD. Therefore, we have revised paragraph (i) of this AD to specify making repairs using a method approved by either the FAA or the EASA (or its delegated agent).

Clarification of Detailed Inspection Definition

For clarification, we have revised the definition of a ''detailed inspection'' in this AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the currently required inspections will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $80 per work hour. Based on these figures, the currently required inspections of this AD on U.S. operators are estimated to be $160 per airplane.

If an affected airplane is imported and placed on the U.S. Register in the future, the required modification of this new AD will take between 16 and 40 work hours per airplane to accomplish, at an average labor rate of $80 per work hour. The required parts will cost between approximately $1,700 and $9,260. Based

on these figures, the required modification of this AD on U.S. operators is estimated to be between $2,980 and $12,460 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register.**

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–25610; Directorate Identifier 2005–NM–260–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13672 (69 FR 33834, June 17, 2004) and adding the following new airworthiness directive (AD):

2006–17–06 Aerospatiale: Amendment 39–14727. Docket No. FAA–2006–25610; Directorate Identifier 2005–NM–260–AD.

Effective Date

(a) This AD becomes effective September 5, 2006.

Affected ADs

(b) This AD supersedes AD 2004–12–13.

Applicability

(c) This AD applies to Aerospatiale Model ATR42–500 airplanes and Model ATR72–212A airplanes, certificated in any category; on which Aerospatiale Modification 4440 has been accomplished; except those Model ATR42–500 airplanes having serial numbers (S/Ns) 618 and subsequent; and except those Model ATR72–212A airplanes having S/Ns 682, 683, 684, 687, and 694 and subsequent.

Unsafe Condition

(d) This AD results from a report that rudder operation difficulties occurred on a Model ATR42–500 series airplane while the airplane was on the ground. We are issuing this AD to prevent interference between the upper closing rib and the rudder, which could result in a rudder jam and consequent reduced controllability of the airplane.

Compliance

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

Restatement of Requirments of AD 2004–12–13

Service Bulletin References for Paragraphs (g), (h), and (i) of This AD

(f) The term ''service bulletin,'' as used in paragraphs (g), (h), and (i) of this AD, means the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–55–0011, excluding the Accomplishment Report, dated September 26, 2002 (for Model ATR42–500 series airplanes); and Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, excluding the Accomplishment Report, dated November 13, 2002 (for Model ATR72–212A series airplanes); as applicable.

(1) For Model ATR72–212A series airplanes: Actions accomplished before the effective date of this AD per Avions de Transport Regional Service Bulletin ATR72–55–1003, dated October 11, 2002, are acceptable for compliance with the corresponding actions required by this AD.

(2) Where the service bulletins specify to report inspection results to the manufacturer, this AD does not require such reporting.

Repetitive Inspections

(g) Within 500 flight hours after July 22, 2004 (the effective date of AD 2004–12–13): Perform a detailed inspection for cracking of the upper closing rib of the vertical fin, per the Accomplishment Instructions of the applicable service bulletin. Repeat this inspection thereafter at intervals not to exceed 500 flight hours until the modification required by paragraph (j) of this AD is accomplished.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

One-time Follow-on Inspections

(h) Before further flight following the initial detailed inspection for cracking required by paragraph (g) of this AD, measure the planarity of the upper closing rib and measure the gap between the rudder horn and the upper closing rib of the vertical fin; per paragraphs 2.C.(2) and 2.C.(3) of the Accomplishment Instructions of the applicable service bulletin.

Repair

(i) If any crack is found during any inspection required by paragraph (g) of this AD; or if any wave, anomaly, or measurement is found that is outside the limits specified in the applicable service bulletin: Before further flight, do all applicable actions in and per paragraph 2.C.(4) of the applicable service bulletin; except, where the applicable service bulletin says to contact the manufacturer for an approved repair solution, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

New Requirements of This AD

Modification

(j) Within 4,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Modify the installation of the vertical leading edge fairing at the fin tip (including doing the detailed inspection for cracking, misplacement, or deformation of the upper closing rib of the vertical fin) by accomplishing all the actions specified in the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–55–0012, Revision 2, dated June 28, 2005 (for Model ATR42–500 airplanes); or ATR72–55–1004, Revision 3, dated September 23, 2005 (for Model ATR72–212 airplanes); as applicable; except where the service bulletins specify to submit certain information to the manufacturer, this AD does not include that requirement. Accomplishment of this modification terminates the repetitive inspection requirement of paragraph (g) of this AD.

Note 2: Avions de Transport Regional Service Bulletin ATR42–55–0012 refers to Avions de Transport Regional Service Bulletin ATR42–55–0011, dated September 26, 2002 (for Model ATR42–500 airplanes), as the appropriate source of service information for doing the detailed inspection specified in paragraph (j) of this AD. Avions de Transport Regional Service Bulletin ATR72–55–1004 refers to Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, dated November 13, 2002 (for Model ATR72–212 airplanes), as the appropriate source of service information for doing the detailed inspection specified in paragraph (j) of this AD.

Modification According to Previous Issues of the Service Bulletins

(k) Modifying the installation of the vertical leading edge fairing at the fin tip is also acceptable for compliance with the requirements of paragraph (j) of this AD if done before the effective date of this AD in accordance with one of the following service bulletins:

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETINS

Avions de Transport Regional Service Bulletin	Revision level	Date
ATR42–55–0012	Original	December 15, 2004.
ATR42–55–0012	1	March 3, 2005.
ATR72–55–1004	Original	December 15, 2004.
ATR72–55–1004	1	March 3, 2005.
ATR72–55–1004	2	June 28, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(m) French airworthiness directive F–2005–059, dated April 13, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use the service bulletins listed in Table 2 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Avions de Transport Regional Service Bulletin	Revision level	Date
ATR42–55–0011, excluding the Accomplishment Report	Original	September 26, 2002.
ATR42–55–0012, excluding the Accomplishment Report	2	June 28, 2005.
ATR72–55–1003, excluding the Accomplishment Report	1	November 13, 2002.
ATR72–55–1004, excluding the Accomplishment Report	3	September 23, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of Avions de Transport Regional Service Bulletin ATR42–55–0012, Revision 2, excluding the Accomplishment Report, dated June 28, 2005; and Avions de Transport Regional Service Bulletin ATR72–55–1004, Revision 3, excluding the Accomplishment Report, dated September 23, 2005; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Avions de Transport Regional Service Bulletin ATR42–55–0012, Revision 2, excluding the Accomplishment Report, dated June 28, 2005, includes the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 3, 4, 7, 9, 12, 13, 15–17, 19, 24, 25, 27, 28, 31, 37, 38	2	June 28, 2005.
2, 21, 39, 40	1	March 3, 2005.
5, 6, 8, 10, 11, 14, 18, 20, 22, 23, 26, 29, 30, 32–36, 41–46	Original	December 15, 2004.

Avions de Transport Regional Service Bulletin ATR72–55–1004, Revision 3, excluding the Accomplishment Report, dated September 23, 2005, includes the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 4, 43, 44	3	September 23, 2005.
2, 21, 39, 40	1	March 3, 2005.
3, 7, 9, 12, 13, 15–17, 19, 24, 25, 27, 28, 31, 37, 38	2	June 28, 2005.
5, 6, 8, 10, 11, 14, 18, 20, 22, 23, 26, 29, 30, 32–36, 41, 42, 45, 46	Original	December 15, 2004.

(2) On July 22, 2004 (69 FR 33834, June 17, 2004), the Director of the Federal Register approved the incorporation by reference of Avions de Transport Regional Service Bulletin ATR42–55–0011, excluding the Accomplishment Report, dated September 26, 2002; and Avions de Transport Regional Service Bulletin ATR72–55–1003, Revision 1, excluding the Accomplishment Report, dated November 13, 2002.

(3) Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 9, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13651 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30508 Amdt. No. 3180]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 21, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 21, 2006.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on August 11, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 28 September 2006*

Dothan, AL, Dothan Regional, LOC BC RWY 14, Amdt 6F, CANCELLED
Willow, AK, Willow, RNAV (GPS) RWY 13, Orig
Willow, AK, Willow, RNAV (GPS) RWY 31, Orig
Willow, AK, Willow, Takeoff Minimums and Textual DP, Orig
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, RNAV (GPS) RWY 16, Amdt 1
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, RNAV (GPS) RWY 34, Amdt 1
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, ILS OR LOC/DME RWY 16, Amdt 1
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, ILS OR LOC/DME RWY 34, Amdt 1
Little Rock, AR, Adams Field, VOR/DME RNAV RWY 22R, Amdt 11A, CANCELLED
Mountain Home, AR, Ozark Regional, ILS OR LOC/DME RWY 5, ORIG
Mountain Home, AR, Ozark Regional, RNAV (GPS) RWY 5, Orig
Mountain Home, AR, Ozark Regional, RNAV (GPS) RWY 23, Orig
Mountain Home, AR, Ozark Regional, GPS RWY 5, Orig–C, CANCELLED
Mountain Home, AR, Ozark Regional, LOC/DME RWY 5, Orig, CANCELLED
Mountain Home, AR, Ozark Regional, GPS RWY 23, Orig–B, CANCELLED
Siloam Springs, AR, Smith Field, VOR/DME RNAV OR (GPS) RWY 18, Amdt 1, CANCELLED
Bullhead City, AZ, Laughlin/Bullhead Intl, RNAV (GPS) RWY 34, Amdt 1
Goodyear, AZ, Phoenix Goodyear, Takeoff Minimums and Textual DP, Orig
Goodyear, AZ, Phoenix Goodyear, RNAV (GPS) RWY 3, Orig
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 1, Orig
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 14, Orig
Arcata/Eureka, CA, Arcata, GPS RWY 2, Orig–A, CANCELLED
Arcata/Eureka, CA, Arcata, GPS RWY 14, Orig, CANCELLED
Byron, CA, Byron, RNAV (GPS) RWY 30, Orig
Byron, CA, Byron, GPS RWY 30, Orig, CANCELLED
Half Moon Bay, CA, Half Moon Bay, RNAV (GPS) Y RWY 12, Orig
Half Moon Bay, CA, Half Moon Bay, RNAV (GPS) Y RWY 30, Orig
Half Moon Bay, CA, Half Moon Bay, RNAV (GPS) Z RWY 12, Orig
Half Moon Bay, CA, Half Moon Bay, RNAV (GPS) Z RWY 30, Orig
Half Moon Bay, CA, Half Moon Bay, GPS RWY 12, Orig, CANCELLED
Half Moon Bay, CA, Half Moon Bay, GPS RWY 30, Orig–A, CANCELLED
Lancaster, CA, General WM J Fox Airfield, RNAV (GPS) RWY 6, Orig
Lancaster, CA, General WM J Fox Airfield, RNAV (GPS)–A, Orig, CANCELLED
Long Beach, CA, Long Beach/Daughtery Field, RNAV (RNP) RWY 12, Orig
Palm Springs, CA, Palm Springs International, RNAV (RNP) Y RWY 13R, Amdt 1
Palm Springs, CA, Palm Springs International, RNAV (RNP) Z RWY 13R, Orig
Palm Springs, CA, Palm Springs International, RNAV (RNP) Y RWY 31L, Amdt 1
Vacaville, CA, Nut Tree, RNAV (GPS) Y RWY 20, Orig
Vacaville, CA, Nut Tree, RNAV (GPS) Z RWY 20, Orig–A
Denver, CO, Centennial, VOR/DME RNAV RWY 28, Amdt 1B, CANCELLED
Greeley, CO, Greeley-Weld County, NDB RWY 34, Orig, CANCELLED
Hayden, CO, Yampa Valley, VOR–A, Amdt 4
Hayden, CO, Yampa Valley, VOR/DME–B, Amdt 1

Boca Raton, FL, Boca Raton, RNAV (GPS) RWY 5, Orig
Boca Raton, FL, Boca Raton, RNAV (GPS) RWY 23, Orig
Boca Raton, FL, Boca Raton, GPS RWY 5, Amdt 1A, CANCELLED
Boca Raton, FL, Boca Raton, Takeoff Minimums and Textual DP, Orig
Boca Raton, FL, Boca Raton, VOR/DME-A, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, Takeoff Minimums and Textual DP, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Y RWY 9R, Amdt 2
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Y RWY 9L, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 27R, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Y RWY 27R, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 9R, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Z RWY 9L, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 27R, Amdt 8
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 9L, Amdt 20
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, LOC/DME RWY 13, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR RWY 27R, Amdt 12
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, LOC RWY 13, Amdt 1, CANCELLED
Miami, FL, Miami Intl, Takeoff Minimums and Textual DP, Amdt 16
Adel, GA, Cook County, VOR/DME RNAV RWY 5, Orig, CANCELLED
Cartersville, GA, Cartersville, NDB RWY 19, Amdt 4, CANCELLED
Columbus, GA, Columbus Metropolitan, NDB RWY 6, Amdt 28, CANCELLED
Washington, GA, Washington-Wilkes County, NDB RWY 13, Amdt 1, CANCELLED
Honolulu, HI, Honolulu Intl, RNAV (GPS) Y RWY 8L, Amdt 1
Honolulu, HI, Honolulu Intl, RNAV (RNP) Z RWY 8L, Orig
Honolulu, HI, Honolulu Intl, RNAV (RNP) RWY 26L, Orig
Arco, ID, Arco-Butte County, NDB–A, Orig–B, CANCELLED
Ankeny, IA, Ankeny Regional, NDB–A Orig B, CANCELLED
Dubuque, IA, Dubuque Regional, RNAV (GPS) RWY 13, Orig
Dubuque, IA, Dubuque Regional, RNAV (GPS) RWY 31, Orig
Dubuque, IA, Dubuque Regional, VOR RWY 13, Amdt 10
Dubuque, IA, Dubuque Regional, NDB OR GPS RWY 31, Amdt 8E, CANCELLED
Dubuque, IA, Dubuque Regional, Takeoff Minimum and Textual DP, Orig
Grinnell, IA, Grinnell Regional, NDB RWY 31, Amdt 3, CANCELLED
Muscatine, IA, Muscatine Muni, RNAV (GPS) RWY 6, Orig
Muscatine, IA, Muscatine Muni, RNAV (GPS) RWY 24, Orig
Muscatine, IA, Muscatine Muni, GPS RWY 6, Orig–B, CANCELLED
Muscatine, IA, Muscatine Muni, GPS RWY 24, Amdt 2B, CANCELLED
Shenandoah, IA, Shenandoah Muni, RNAV (GPS) RWY 4, Orig
Shenandoah, IA, Shenandoah Muni, NDB RWY 4, Orig-B
Shenandoah, IA, Shenandoah Muni, Takeoff Minimums and Textual DP, Amdt 1
Spencer, IA, Spencer Muni, NDB RWY 12, Amdt 1B, CANCELLED
Waterloo, IA, Waterloo Regional, RNAV (GPS) RWY 12, Orig
Waterloo, IA, Waterloo Regional, RNAV (GPS) RWY 30, Orig
Waterloo, IA, Waterloo Regional, VOR RWY 12, Amdt, 10
Waterloo, IA, Waterloo Regional, VOR/DME RWY 30, Amdt, 15
Waterloo, IA, Waterloo Regional, Takeoff Minimums and Textual DP, Orig
Waterloo, IA, Waterloo Regional, NDB RWY 12, Amdt 9A, CANCELLED
Chicago, IL, Chicago Midway Intl, ILS OR LOC RWY 4R, Orig
Chicago, IL, Chicago Midway Intl, ILS RWY 4R, Amdt 9C, CANCELLED
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 14L, Amdt 29, ILS RWY 14L (CAT II), Amdt 29, ILS RWY 14L (CAT III), Amdt 29
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 14L, Amdt 1
Flora, IL, Flora Muni, NDB RWY 21, Amdt 5A, CANCELLED
Moline, IL, Quad City Intl, NDB RWY 9, Amdt 28, CANCELLED
Connersville, IN, Mettel Field, RNAV (GPS) RWY 18, Amdt 1
Connersville, IN, Mettel Field, RNAV (GPS) RWY 36, Amdt 1
Connersville, IN, Mettel Field, VOR–A, Amdt 1
Connersville, IN, Mettel Field, Takeoff Minimums and Textual DP, Amdt 2
Pittsburg, KS, Atkinson Muni, NDB–A, Orig, CANCELLED
Scott City, KS, Scott City Muni, RNAV (GPS) RWY 17, Orig
Scott City, KS, Scott City Muni, RNAV (GPS) RWY 35, Orig
Scott City, KS, Scott City Muni, GPS RWY 17, Orig, CANCELLED
Scott City, KS, Scott City Muni, GPS RWY 35, Orig, CANCELLED
Wellington, KS, Wellington Muni, NDB RWY 17, Amdt 5, CANCELLED
Frankfort, KY, Capital City, RNAV (GPS) RWY 24, Amdt 1
Frankfort, KY, Capital City, RNAV (GPS) RWY 6, Amdt 1
Lexington, KY, Blue Grass, RNAV (GPS) RWY 4, Amdt 1
Lexington, KY, Blue Grass, RNAV (GPS) RWY 22, Amdt 1
Lexington, KY, Blue Grass, ILS OR LOC RWY 4, Amdt 17
Lexington, KY, Blue Grass, VOR–A, Amdt 9
Lexington, KY, Blue Grass, Takeoff Minimums and Textual DP, Amdt 6
London, KY, London-Corbin Arpt-Magee Fld, ILS OR LOC RWY 6, Amdt 1
London, KY, London-Corbin Arpt-Magee Fld, RNAV (GPS) RWY 6, Orig
London, KY, London-Corbin Arpt-Magee Fld, RNAV (GPS) RWY 24, Orig
London, KY, London-Corbin Arpt-Magee Fld, GPS RWY 6, Orig–B, CANCELLED
London, KY, London-Corbin Arpt-Magee Fld, VOR RWY 6, Amdt 13
London, KY, London-Corbin Arpt-Magee Fld, VOR/DME RNAV RWY 6, Amdt 3D, CANCELLED
London, KY, London-Corbin Arpt-Magee Fld, GPS RWY 24, Orig–B, CANCELLED
London, KY, London-Corbin Arpt-Magee Fld, Takeoff Minimums and Textual DP, Amdt 3
Lake Charles, LA, Chennault Intl, NDB RWY 15, Orig CANCELLED
New Iberia, LA, Acadiana Regional, NDB OR GPS RWY 34, Amdt 8B CANCELLED
Slidell, LA, Slidell, NDB RWY 18, Amdt 1C, CANCELLED
Cape Girardeau, MO, Cape Girardeau Regional, NDB RWY 10, Amdt 10, CANCELLED
Higginsville, MO, Higginsville Industrial Muni, RNAV (GPS) RWY 16, Orig
Higginsville, MO, Higginsville Industrial Muni, RNAV (GPS) RWY 34, Orig
Higginsville, MO, Higginsville Industrial Muni, Takeoff Minimum and Textual DP, Orig
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, RNAV (GPS) RWY 3, Orig
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, RNAV (GPS) RWY 21, Orig
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, VOR RWY 3, Amdt 6
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, GPS RWY 21, Orig-B, CANCELLED
Kaiser/Lake Ozark, MO, Lee C Fine Memorial, Takeoff and Minimums and Textual DP, Amdt 1
Monticello, MO, Lewis County Regional, RNAV (GPS) RWY 18, Orig
Monticello, MO, Lewis County Regional, RNAV (GPS) RWY 36, Orig
Monticello, MO, Lewis County Regional, GPS RWY 18, Orig, CANCELLED
Monticello, MO, Lewis County Regional, GPS RWY 36, Orig, CANCELLED
Monticello, MO, Lewis County Regional, Takeoff Minimum and Textual DP, Orig
Poplar Bluff, MO, Poplar Bluff Municipal, NDB RWY 36, Amdt 1B, CANCELLED
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Orig–A
St Louis, MO, Lambert-St Louis Intl, ILS PRM RWY 11, Orig B, (Simultaneous Close Parallel)
West Plains, MO, West Plains Muni, RNAV (GPS) RWY 18, Orig
West Plains, MO, West Plains Muni, RNAV (GPS) RWY 36, Orig
West Plains, MO, West Plains Muni, GPS RWY 18, Amdt 1A, CANCELLED
West Plains, MO, West Plains Muni, GPS RWY 36, Orig, CANCELLED
West Plains, MO, West Plains Muni, Takeoff Minimum and Textual DP, Orig
Oxford, MS, University-Oxford, VOR/DME RNAV RWY 27, Amdt 3, CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV RWY 9, Amdt 3, CANCELLED

West Point, MS, McCharen Field, VOR/DME RNAV RWY 36, Amdt 3A, CANCELLED
Billings, MT, Billings Logan Intl, VOR/DME RNAV RWY 28R, Amdt 2, CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RNAV RWY 9, Orig, CANCELLED
Morganton, NC, Morganton-Lenoir, NDB RWY 3, Amdt 5, CANCELLED
Hobbs, NM, Lea County Regional, ILS OR LOC RWY 3, Amdt 7
Hobbs, NM, Lea County Regional, Takeoff Minimums and Textual DP, Orig
Roswell, NM, Roswell International Air Center, RNAV (GPS) RWY 3, Orig
Roswell, NM, Roswell International Air Center, RNAV (GPS) RWY 17, Orig
Roswell, NM, Roswell International Air Center, RNAV (GPS) RWY 21, Orig
Roswell, NM, Roswell International Air Center, RNAV (GPS) RWY 35, Orig
Roswell, NM, Roswell International Air Center, GPS–C, Orig, CANCELLED
Roswell, NM, Roswell International Air Center, GPS RWY 21, Orig, CANCELLED
Roswell, NM, Roswell International Air Center, GPS RWY 35, Orig-B, CANCELLED
Roswell, NM, Roswell International Air Center, VOR/DME RNAV RWY 35, Amdt 3, CANCELLED
Winnemucca, NV, Winnemucca Muni, RNAV (GPS) RWY 14, Orig
Winnemucca, NV, Winnemucca Muni, RNAV (GPS) RWY 32, Orig
Winnemucca, NV, Winnemucca Muni, GPS RWY 14, Orig-A, CANCELLED
Winnemucca, NV, Winnemucca Muni, GPS RWY 32, Orig, CANCELLED
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, NDB RWY 34, Amdt 18, CANCELLED
New York, NY, John F. Kennedy Intl, Takeoff Minimums and Textual DP, Amdt 7
Kent, OH, Kent State Univ, RNAV (GPS) RWY 1, Amdt 1
Kent, OH, Kent State Univ, RNAV (GPS) RWY 19, Amdt 1
Norman, OK, University of Oklahoma Westheimer, VOR/DME RNAV RWY 3, Orig–G, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 17R, Amdt 1
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 35L, Amdt 1
Oklahoma City, OK, Clarence E. Page Muni, VOR/DME RNAV RWY 17R, Amdt 1A, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, VOR/DME RNAV RWY 35L, Amdt 1A, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, Takeoff Minimums and Textual DP, Orig
Pendleton, OR, Pendleton/Eastern Oregon Regional at Pendleton, NDB or GPS–A, Amdt 7, CANCELLED
Philadelphia, PA, Philadelphia Intl, VOR/DME–A, Amdt 3
North Kingstown, RI, Quonset State, VOR/DME RNAV RWY 34, Amdt 2, CANCELLED
Columbia, SC, Columbia Metropolitan, NDB RWY 11, Amdt 23, CANCELLED
Jacksboro, TN, Campbell County, VOR/DME RNAV OR GPS–A, Amdt 4, CANCELLED
Jacksboro, TN, Campbell County, NDB RWY 23, Amdt 5, CANCELLED
Knoxville, TN, McGhee-Tyson, RNAV (GPS) RWY 5L, Amdt 1
Knoxville, TN, McGhee-Tyson, RNAV (GPS) RWY 23R, Amdt 1
Somerville, TN, Fayette Co., RNAV (GPS) RWY 19, Amdt 1
Somerville, TN, Fayette Co., Takeoff Minimums and Textual DP, Amdt 1
Springfield, TN, Springfield Robertson County, NDB RWY 4, Amdt 1, CANCELLED
Amarillo, TX, Tradewind, VOR/DME RNAV RWY 35, Orig–B, CANCELLED
Dumas, TX, Moore County, VOR/DME RNAV RWY 19, Amdt 3D, CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV RWY 35L, Amdt 4, CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV RWY 17R, Amdt 4, CANCELLED
Houston, TX, George Bush Intercontinental Arpt/Houston, VOR/DME RWY 33R, Amdt 14B, CANCELLED
Ingleside, TX, T P Mc Campbell, RNAV (GPS) RWY 13, Orig
Ingleside, TX, T P Mc Campbell, RNAV (GPS) RWY 31, Orig
Ingleside, TX, T P Mc Campbell, Takeoff Minimums and Textual DP, Orig
Marshall, TX, Harrison County, VOR/DME RNAV RWY 33, Amdt 1D, CANCELLED
Mineola/Quitman, TX, Wood County, VOR/DME RNAV RWY 18, Amdt 2, CANCELLED
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 18, Orig
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 33L, Amdt 1
Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 15R, Amdt 1
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) Y RWY 21, Amdt 1
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) Z RWY 21, Orig
Roanoke, VA, Roanoke Regional/Woodrum Field, LDA RWY 6, Amdt 9
Moses Lake, WA, Grant County, VOR/DME RNAV RWY 22, Amdt 1A, CANCELLED
Eagle River, WI, Eagle River Union, RNAV (GPS) RWY 4, Orig
Eagle River, WI, Eagle River Union, GPS RWY 4, Orig, CANCELLED
Eagle River, WI, Eagle River Union, Takeoff Minimums and Textual DP, Orig
Marshfield, WI, Marshfield Muni, RNAV (GPS) RWY 16, Orig
Marshfield, WI, Marshfield Muni, RNAV (GPS) RWY 34, Orig
Marshfield, WI, Marshfield Muni, GPS RWY 16, Orig, CANCELLED
Marshfield, WI, Marshfield Muni, Takeoff Minimums and Textual DP, Orig

[FR Doc. E6–13590 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9254]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, March 14, 2006 (71 FR 13008) regarding guidance on suspension of losses on certain stock dispositions.

DATES: These corrections are effective March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa Abell, (202) 622–7700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9254) that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9254) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 1 and 602 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended and continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1502–35 [Corrected]

■ **Par. 2.** Section 1.1502–35 is amended as follows:

■ 1. By revising the text of paragraph (d)(4)(i)(B)(*2*).

■ 2. By revising the text of paragraphs (d)(8) and (d)(9).

■ 3. By revising the text of paragraph (e), *Example 3.*, paragraph (v).

■ 4. By revising the text of paragraph (e), *Example 4.*, the first sentence of paragraph (iv), and paragraph (v).
■ 5. By revising the text of paragraph (e), *Example 6.*, paragraph (i).
■ 6. By revising the text of paragraph (g)(5) *Examples 1.* and *2*, first sentence of paragraph (i).
■ 7. By revising the text of paragraph (g)(5) *Example 3*, first three sentences of paragraph (i), and paragraph (ii).
■ 8. By revising the text of the first sentence of paragraph (j).

§ 1.1502–35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

* * * * *

(d)

(4) * * *

(i) * * *

(B) * * *

(*2*) Any liabilities of the subsidiary that have been taken into account for tax purposes.

* * * * *

(8) Higher-tier. A subsidiary is higher-tier with respect to a member if or to the extent investment adjustments under § 1.1502–32 with respect to the stock of the latter member would affect investment adjustments with respect to the stock of the former member.

(9) Lower-tier. A subsidiary is lower-tier with respect to a member if or to the extent investment basis adjustments under § 1.1502–32 with respect to the stock of the former member would affect investment adjustments with respect to the stock of the latter member.

(e) * * *

Example 3. * * *

(v) *Effect of subsequent stock sale.* P recognizes $0 gain/loss on the Year 6 sale of its remaining S common stock. No amount of suspended loss remains to be allowed under paragraph (c)(5) of this section.

Example 4. * * *

(iv) *Effect of subsequent asset sale on suspended loss.* Because P cannot establish that all or a portion of the loss recognized on the sale of Asset B was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 4 stock sale and such loss is allocable to the period beginning on the date of the Year 4 disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 4 disposition and before the first date on which S2 is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. * * *

(v) *Effect of subsequent stock sale.* In year 6, when S1 sells its remaining S2 stock for $100, it recognizes $0 gain/loss. Pursuant to paragraph (c)(5) of this section, the remaining $5 of the suspended loss is allowed on the P group's return for Year 6 when S1 sells its remaining S2 stock.

* * * * *

Example 6. * * * (i) In Year 1. P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of common stock of S in a transfer to which section 351 applies. In Year 4, in a transaction that is not part of a plan that includes the Year 1 and Year 2 contributions, P contributes the 20 shares of S common stock it acquired in Year 2 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. Immediately after the contribution to PS, S is a member of the P group. In Year 5, P sells its interest in PS for $20.

* * * * *

(g) * * *

(5) * * *

Example 1. Transfers of property in the avoidance of basis redetermination rule—(i) *Facts.* In Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 3, P contributes Asset A with a basis of $50 and a value of $20 to PS in exchange for an additional capital and profits interest in PS in a transaction described in section 721. Also in Year 3, PS contributes Asset A to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells Asset A for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. In Year 5, P sells its entire interest in PS for $40.

Example 2. Transfers effecting a reimportation of loss—(i) *Facts.* In Year 1, P forms S with a contribution of Asset A with a value of $100 and a basis of $120, Asset B with a value of $50 and a basis of $70, and Asset C with a value of $90 and a basis of $100 in exchange for all of the common stock of S and S becomes a member of the P group. * * *

* * * * *

Example 3. Transfers to avoid recognition of gain—(i) *Facts.* P owns all of the stock of S1 and S2. The S2 stock has a basis of $400 and a value of $500. S1 owns 50% of the S3 common stock with a basis of $150. * * *

(ii) *Analysis.* Pursuant to paragraph (b)(4) of this section, because S2 owns stock of S3 (another subsidiary of the same group) and, immediately after the sale of the S2 stock, S3 is a member of the group, then for purposes of applying paragraph (b) of this section, S2 is deemed to have transferred its S3 stock. Because S3 is a member of the group immediately after the transfer of the S2 stock and the S3 stock deemed transferred has a basis in excess of value, the group in the S3 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S2 stock.

Accordingly, P would recognize only $1 of gain on the sale of its S2 stock. However, because the recapitalization of the S3 was structured with a view to, and has the effect of, avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b) of this section, paragraph (g)(4)(i) of this section applies. Accordingly, paragraph (b) of this section does not apply upon P's disposition of the S2 stock and P recognizes $100 gain on the disposition of the S2 stock.

* * * * *

(j) *Effective date.* This section applies with respect to stock transfers, deconsolidations of subsidiaries, determinations of worthlessness, and stock dispositions on or after March 10, 2006. * * *

* * * * *

Guy R. Traynor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13399 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9260]

RIN 1545–BF46

Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on Tuesday, April 25, 2006 (71 FR 24516) regarding the application of separate foreign tax credit limitations to dividends received from noncontrolled section 902 corporations under section 904(d)(4).

DATES: These corrections are effective April 25, 2006.

FOR FURTHER INFORMATION CONTACT: Ginny Chung, (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9260) that are the subject of this correction are under section 904 of the Internal Revenue Code.

Need for Correction

As published, (TD 9260) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the temporary regulations (TD 9260) which was the subject of FR Doc. 06–3882, is corrected as follows:

§ 1.904–4 [Corrected]

■ 1. On page 24530, column 2, § 1.904–4, Instructional Par. 11., number 3, the language ''3. In paragraph (e)(5)(iii), remove the language ''and paragraph (9) of this section'' and add the language ''paid in taxable years beginning before January 1, 2003'' in its place.'' is corrected to read ''3. In paragraph (e)(5)(iii), remove the language ''and paragraph (g) of this section'' and add the language ''paid in taxable years beginning before January 1, 2003'' in its place.''

Guy R. Traynor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–13425 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–064]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''Ocean City Maryland Offshore Challenge'', a power boat race to be held on the waters of the Atlantic Ocean adjacent to the shoreline at Ocean City, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the power boat race.

DATES: This rule is effective from 10 a.m. to 4 p.m. on September 10, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–064) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 29, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Atlantic Ocean, Ocean City, MD in the **Federal Register** (71 FR 37019). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

On September 10, 2006, the Offshore Performance Association, Inc. will conduct the ''Ocean City Maryland Offshore Challenge'', on the waters of the Atlantic Ocean along the shoreline near Ocean City, MD. The event will consist of approximately 40 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean, Ocean City, Maryland.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a small segment of the Atlantic Ocean near Ocean City, MD during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

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 would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Although the regulated area will apply to waters of the Atlantic Ocean near the Ocean City, Maryland shoreline, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels

shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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 would call 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This 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 would not create an environmental risk to health or risk to safety that might 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 would 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 100.35–T05–064 to read as follows:

§ 100.35–T05–064 Atlantic Ocean, Ocean City, MD.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′01″ N, longitude 075°03′56″ W, thence easterly to latitude 38°21′50″ N, longitude 075°03′28″ W, thence southwesterly to latitude 38°20′10″ N, longitude 075°04′08″ W, thence westerly to a position near the shoreline at latitude 38°20′15″ N, longitude 075°04′38″ W, thence northerly along the shoreline to the point of origin. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Ocean City Maryland Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) All persons and vessels shall comply with the instructions of the Official Patrol.

(4) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Effective period.* This section will be effective from 10 a.m. to 4 p.m. on September 10, 2006.

Dated: August 9, 2006.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–13805 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–103]

Drawbridge Operation Regulations; Mill Neck Creek, Oyster Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Bayville Bridge, across Mill Neck Creek, mile 0.1, at Oyster Bay, New York. This deviation allows the bridge owner to open only one of the two moveable bascule spans for the passage of vessel traffic from September 5, 2006 through September 29, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from September 5, 2006 through September 29, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

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

SUPPLEMENTARY INFORMATION:

The Bayville Bridge, across Mill Neck Creek, mile 0.1, at Oyster Bay, New York, has a vertical clearance in the closed position of 9 feet at mean high water and 16 feet at mean low water. The existing regulation (33 CFR 117.5) requires the bridge to open on demand.

The owner of the bridge, County of Nassau, Department of Public Works, requested a temporary deviation to facilitate scheduled structural bridge repairs, rehabilitation of the two bascule spans.

In order to perform the structural repairs, the bascule span undergoing work must remain in the closed position.

Therefore, under this temporary deviation the Bayville Bridge across Mill Neck Creek, mile 0.1, at Oyster Bay, New York, shall open only one of the two movable spans for the passage of vessel traffic from September 5, 2006 through September 29, 2006.

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.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

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

Dated: August 10, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–13776 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CCGD05–06–059]

RIN 1625–AA00

Safety Zone; Route 33 Bridge Construction, Pamunkey River, West Point, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 600-foot radius safety zone in support of bridge construction operations being conducted in the vicinity of the Route 33 Bridge (Eltham Bridge) over the Pumunkey River near the Town of West Point, VA. This action is intended to restrict vessel traffic on the Pamunkey River as necessary to protect mariners from the hazards associated with bridge construction operations.

DATES: This safety zone will be in effect from August 15 to August 20, 2006, and from September 12 to September 17, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–059 and are available for inspection or copying at Sector Hampton Roads, Prevention Department, Norfolk Federal Building, 200 Granby Street, Suite 700, Norfolk, VA 23510, between 9:30 a.m. and 2 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Bill Clark, project officer, USCG Sector Hampton Roads, telephone number (757) 668–5580.

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 because it is impracticable and contrary to the public interest to delay the effective

date of this rule. The project will begin at 6:30 a.m. eastern time on August 15, 2006 and end at 6:30 a.m. eastern time on August 20, 2006, then commence again at 6:30 a.m. on September 12, and end at 6:30 a.m. on September 17, 2006. Due to the dangers posed by the bridge construction operations, it is in the public's interest to have these regulations in effect during those operations.

For the same reasons, the Coast Guard also finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. Because of the hazards associated with the construction operations, a limited access area is necessary to provide for the safety of mariners.

Background and Purpose

Bridge construction operations will be conducted on the center span portion of a new bridge being constructed approximately 100 feet south of the Route 33 Bridge (Eltham Bridge) near West Point, VA. These operations will commence at 6:30 a.m. on August 15, 2006 and end at 6:30 a.m. on August 20, 2006, then commence again at 6:30 a.m. on September 12, and end at 6:30 a.m. on September 17, 2006. To facilitate the bridge construction operations while protecting mariners and spectators from the associated hazards, a 600-foot radius safety zone centered on position 37–32–01 N / 076–48–21 W will be established during the bridge construction operations.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone that encompasses all waters within 600 feet of position 37–32–01 N/076–48–21 W in the vicinity of West Point, VA. This safety zone will be established in the interest of public safety during the bridge construction operations and will be effective from 6:30 a.m. on August 15, 2006 until 6:30 a.m. on August 20, 2006, then again from 6:30 a.m. on September 12, 2006 until 6:30 a.m. on September 17, 2006. General navigation in the safety zone will be restricted. Except for participants and vessels authorized by the Captain of the Port's designated representative, no person or vessel may enter or remain in the regulated area.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the fact that the safety zone is only enforced for a limited duration and vessel traffic can safely pass outside the safety zone during the operation.

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 or anchor in that portion of the Pamunkey River between 6:30 a.m. on August 15 to 6:30 a.m. on August 20, 2006 and between 6:30 a.m. on September 12, 2006 to 6:30 a.m. on September 17, 2006. For the reasons described in *Regulatory Evaluation,* above, the safety zone will not have a significant impact on a substantial number of small entities; maritime advisories will be issued, so the mariners can adjust their plans accordingly.

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 the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket.

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, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–059, to read as follows:

§ 165.T05–059 Route 33 Bridge Construction, Pamunkey River, West Point, VA.

(a) *Location.* The following area is a safety zone: All waters of the Pamunkey River, from surface to bottom, within 600 feet of position 37–32–01 N/076–48–21 W in the vicinity of West Point, VA.

(b) *Definition.* For purposes of this section, *designated representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone must comply with all directions given by the COTP or the COTP's designated representative.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555 or (757) 484–8192.

(4) The Designated Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective date:* This regulation is effective from 6:30 a.m. on August 15, 2006 until 6:30 a.m. on August 20, 2006 and from 6:30 a.m. September 12, 2006 until 6:30 a.m. on September 17, 2006.

Dated: August 4, 2006.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E6–13798 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–8211–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the T.H. Agriculture and Nutrition Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the T.H. Agriculture and Nutrition Site in the City of Fresno, Fresno County, California, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of California have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

DATES: *Effective Date:* August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Lynn Suer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, SFD–7–2, San Francisco, California 94105, (415) 972–3148.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: T.H. Agriculture and Nutrition, City of Fresno, Fresno County, California. A Notice of Intent to Delete for this Site was published in the **Federal Register** on July 11, 2006 (71 FR 39032). The closing date for comments on the Notice of Intent to Delete was August 10. No comments were received. Therefore, EPA has not prepared a Responsiveness Summary. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the

unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 11, 2006.

Keith Takata,

Acting Regional Administrator, Region 9.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for the ''T. H. Agriculture & Nutrition Co.'' site in Fresno, Fresno County, California.

[FR Doc. E6–13745 Filed 8–18–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 5, 10, 12 and 13

[USCG–2006–25535]

RIN 1625–ZA09

Mariner Licensing and Documentation Program Restructuring and Centralization

AGENCY: Coast Guard, DHS.

ACTION: Technical amendment.

SUMMARY: This technical amendment authorizes the Commanding Officer, National Maritime Center, to perform certain mariner credentialing functions in addition to Officers in Charge, Marine Inspection, who currently perform those functions. At the end of a transitional period, most credentialing functions will be consolidated at a centralized location. The amendment also makes technical changes to the mariner credentialing appellate process. This rule is organizational in nature and will have no substantive effect on the regulated public. The amendment also will have no effect on any other Coast Guard regulatory projects or policy initiatives.

DATES: These changes are effective September 20, 2006.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Gerald Miante, Project Manager, Maritime Personnel Qualifications Division (G–PSO–1), U.S. Coast Guard, telephone 202–372–1407. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this amendment. Under 5 U.S.C. 553(b)(A), the Coast Guard finds that this technical amendment is exempt from notice and comment rulemaking requirements because the amendment only makes non-substantive changes involving internal rules of agency organization, procedure, and practice. These changes will have no substantive effect on the public; therefore, it is unnecessary and impractical to publish an NPRM.

Background and Purpose

Mariner credentialing functions are currently performed at the Regional Examination Centers (RECs). The Coast Guard is authorizing the Commanding Officer, National Maritime Center (NMC) to perform these functions in addition to the Officers in Charge, Marine Inspection (OCMIs). This is the first step in an incremental restructuring and centralization plan that will eventually streamline the RECs and bring them under the authority of the NMC. During implementation of this plan, some REC credentialing functions will be gradually transferred to the NMC, and some OCMIs will continue to have authority to issue credentials.

When the restructuring and centralization is complete, the Coast Guard will notify the public in the **Federal Register** that the NMC will make decisions on applications and authorize the issuance of mariner credentials. The NMC will also be the central location for mariner records and a processing point for associated fees. RECs will remain open and continue to assist mariners to complete applications, take fingerprints, verify mariners' citizenship and identities, administer examinations, administer oaths, and conduct oversight for approved courses.

These future changes are designed to improve service to mariners and address national security concerns. The restructuring and centralization will: (1) Enhance security by implementing consolidated system controls for the credentialing process; (2) improve the consistency of information, procedures, and mariner evaluations; and (3) improve program efficiencies and customer service through economies of scale and increased use of technology.

Discussion of the Amendment

Title 46 of the Code of Federal Regulations (46 CFR) is being amended to authorize the Commanding Officer of the NMC, in addition to the OCMIs, to perform mariner credentialing functions. The NMC will begin phasing in the transfer of these functions from the OCMIs when facilities for the new centralized NMC become operational. Additionally, this amendment establishes a single final administrative appellate authority for all appeals concerning mariner credentialing. In § 12.02–3, the term ''merchant mariner's documents'' has been substituted for ''certificates of identification, certificates of service, certificates of efficiency, and continuous discharge books'' because the Coast Guard no longer issues the latter documents.

These technical and organizational changes do not change any substantive requirements of existing regulations. Further, this amendment will have no effect on any Coast Guard regulatory projects or policy initiatives, including Merchant Marine Credentials, Docket No. USCG–2006–24371, Transportation Worker Identification Credential, Docket Nos. USCG–2006–24196 and TSA–2006–24191, Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents, Docket No. USCG–2003–14500, and Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariners' Licenses and Certificates of Registry, Docket No. USCG–2004–17455.

Regulatory Evaluation

This amendment 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 (OMB) has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory evaluation is necessary. Because this amendment only authorizes the NMC to perform mariner credentialing functions and reorganizes the administrative appellate procedure, it will not impose any costs on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this amendment 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.

It is not expected that this amendment will have a significant economic impact on any small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this technical amendment will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This amendment 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 amendment 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 amendment will not result in such an expenditure, we do discuss the effects of this amendment elsewhere in this preamble.

Taking of Private Property

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

Indian Tribal Governments

This amendment 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 amendment 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, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(b), of the Instruction from further environmental documentation. Paragraph (34)(b) excludes regulatory actions concerning internal agency functions or organization, such as delegation of authority. Under figure 2–1, paragraph (34)(b), of the Instruction, an Environmental Analysis Check List and a Categorical Exclusion Determination are not required for this technical amendment.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 13

Cargo vessels, Reporting and recordkeeping requirements, Seamen.

■ For the reasons set forth in the preamble, the Coast Guard amends 46 CFR parts 1, 5, 10, 12 and 13 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

■ 1. The authority citation for 46 CFR part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 1.01–15, revise the section heading, remove the NOTE following paragraph (b), re-designate paragraph (c) as paragraph (d), revise newly redesignated paragraph (d), and add a new paragraph (c) to read as follows:

§ 1.01–15 Organization; Districts; National Maritime Center.

* * * * *

(c) The Commanding Officer of the National Maritime Center has been designated and delegated to give direction to Coast Guard activities relating to marine safety functions consisting of the licensing, credentialing, certificating, shipment and discharge of seamen; referring to the processing of Regional Examination Center (REC) or cognizant OCMI violations of law, negligence, misconduct, unskillfulness, incompetence or misbehavior of persons applying for or holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard; suspension or withdrawal of course approvals; and recommending possible suspension or revocation under 46 U.S.C. Chapter 77 of licenses, credentials, certificates and merchant mariner's documents. Applicants for merchant mariner's documents, licenses, certificates or credentials may apply to the Coast Guard National Maritime Center or any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 4200 Wilson Boulevard, Suite 630, Arlington, Virginia 22203–1804, or by telephone at 202–493–1002. A list of Regional Examination Locations is available through the Coast Guard Web site at *http://www.uscg.mil.*

(d) For descriptions of Coast Guard districts and marine inspection zones, see 33 CFR part 3.

■ 3. Revise § 1.03–15(h)(3) and (h)(4) to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(3) Commandant (G–PC), for all appeals involving suspension or withdrawal of course approvals, and all marine personnel issues that are appealed from the National Maritime Center or from an OCMI through a District Commander;

(4) Commandant (G–PSE), for appeals involving the recognition of a classification society; or

* * * * *

■ 4. Revise § 1.03–45 to read as follows:

§ 1.03–45 Appeals from decisions or actions of the National Maritime Center.

Any person directly affected by a decision or action of an officer or employee of the National Maritime Center (NMC) involving any of the marine safety functions listed in § 1.01–15(c) of this subpart may, after requesting reconsideration of the decision or action by the NMC, make a formal appeal of that decision or action, via the NMC, to the Director of Inspection and Compliance, Commandant (G–PC), in accordance with the procedures contained in § 1.03–15 of this subpart. The decision of the Director of Inspection and Compliance, Commandant (G–PC), on such an appeal will constitute final agency action.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

■ 5. The authority citation for 46 CFR part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

■ 6. In Subpart B—Definitions, add new 46 CFR 5.11 to read as follows:

§ 5.11 Officer in Charge, Marine Inspection.

Officer in Charge, Marine Inspection (OCMI) for the purposes of part 5 means the officer or individual so designated at one of the Regional Examination Centers, or any person so designated by the Commandant.

■ 7. Revise 46 CFR 5.15 to read as follows:

§ 5.15 Investigating Officer.

An *investigating officer* is a Coast Guard official designated by the Commandant, a District Commander, or the Officer in Charge, Marine Inspection, for the purpose of conducting investigations of marine casualties or matters pertaining to the conduct of persons applying for or holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard. An Officer in Charge, Marine Inspection is an investigating officer without further designation.

PART 10—LICENSING OF MARITIME PERSONNEL

■ 8. The authority citation for 46 CFR part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

■ 9. In 46 CFR 10.103 revise the definition of *Officer in Charge, Marine Inspection* (OCMI) to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Officer in Charge, Marine Inspection (OCMI) for the purposes of part 10 means the officer or individual so designated at one of the Regional Examination Centers, or any person so designated by the Commandant.

* * * * *

■ 11. Revise 46 CFR 10.105(a) to read as follows:

§ 10.105 Applications.

(a) Applicants for merchant mariner's documents, licenses, certificates or credentials may apply to the Coast Guard National Maritime Center or any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 4200 Wilson Boulevard, Suite 630, Arlington, Virginia 22203–1804, or by telephone at 202–493–1002. A list of Regional Examination Locations is available through the Coast Guard Web site at *http://www.uscg.mil.*

* * * * *

PART 12—CERTIFICATION OF SEAMEN

■ 12. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; Department of Homeland Security Delegation No. 0170.1.

■ 13. Amend 46 CFR 12.01–6 to add, in alphabetical order, the following definition:

§ 12.01–6 Definitions of terms used in this part.

* * * * *

Officer in Charge, Marine Inspection (OCMI) for the purposes of part 12 means the officer or individual so designated at one of the Regional Examination Centers, or any person so designated by the Commandant.

* * * * *

■ 14. Revise 46 CFR 12.01–7 to read as follows:

§ 12.01–7 Where to apply.

Applicants for licenses or certification may apply to the Coast Guard National

Maritime Center or any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 4200 Wilson Boulevard, Suite 630, Arlington, Virginia 22203–1804, or by telephone at 202–493–1002. A list of Regional Examination Locations is available through the Coast Guard Web site at *http://www.uscg.mil.*

■ 15. Revise § 12.02–3(a) to read as follows:

§ 12.02–3 Where documents are issued.

(a) Merchant mariner's documents may be issued to qualified applicants at the National Maritime Center or at any Regional Examination Center during usual business hours.

* * * * *

PART 13—CERTIFICATION OF TANKERMEN

■ 16. The authority citation for part 13 continues to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; Department of Homeland Security Delegation No. 0170.1.

■ 17. In 46 CFR 13.103, revise the definition of *Officer in Charge, Marine Inspection (OCMI)* to read as follows:

§ 13.103 Definitions.

* * * * *

Officer in Charge, Marine Inspection (OCMI) for the purposes of part 13 means the officer or individual so designated at one of the Regional Examination Centers, or any person so designated by the Commandant.

* * * * *

Dated: August 11, 2006.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. E6–13532 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 635

[Docket No. 060425111–6205–02; I.D. 041906B]

RIN 0648–AN09

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 18A; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to a final rule.

SUMMARY: This document contains a correction to the final regulations which were published Wednesday, August 9, 2006. Those regulations established a number of requirements to improve enforceability and monitoring in the reef fish fishery in the Gulf of Mexico.

DATES: The corrected effective date for regulations concerning §§ 622.4(h)(1) and 635.4(m)(1) published August 9, 2006, at 71 FR 45428 is October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Rod Dalton, telephone 727–824–5305; fax 727–824–5308; e-mail *Rod.Dalton@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction were published Wednesday, August 9, 2006, (71 FR 45428), [Docket No. 060425111–6205–02]. The final regulations established measures to improve enforceability and monitoring of the reef fish fishery in the Gulf of Mexico and to reduce mortality of incidentally caught sea turtles and smalltooth sawfish.

Need for Correction

As published, the final regulations contain an error in the **DATES** caption regarding the effective date for §§ 622.4(h)(1) and 635.4(m)(1) and requires correction.

Correction

Accordingly, the final rule, published on August 9, 2006, at 71 FR 45428, is corrected as follows:

On page 45428, in column 2, in the last line of the ''DATES'' caption, ''September 1, 2006.'' is corrected to read as ''October 1, 2006.''

Dated: August 15, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–13781 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 081506A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Community Development Quota (CDQ) and non-CDQ pollock from the Aleutian Islands subarea to the Bering Sea subarea and Bering Sea subarea pollock from the incidental catch allowance to the directed fisheries. These actions are necessary to provide opportunity for harvest of the 2006 total allowable catch (TAC) of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective August 16, 2006, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the 2006 TAC of non-CDQ pollock is 9,500 metric tons (mt) and the CDQ pollock is 1,140 mt as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the reallocation on March 3, 2006 (71 FR 11541, March 8, 2006).

As of August 10, 2006, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the following amounts of pollock in the Aleutian Islands subarea will not be harvested: 4,000 mt of non-CDQ pollock and 1,140 mt of CDQ pollock. Therefore, in accordance

with § 679.20(a)(5)(iii)(B)(*4*), NMFS proportionally reallocates 4,000 mt of non-CDQ pollock and 1,140 mt of CDQ pollock from the Aleutian Islands subarea to the 2006 Bering Sea subarea B season allocations, as listed in Tables 3 and 10 of the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 11541, March 8, 2006).

The harvest specifications for pollock in the Aleutian Islands subarea included in the harvest specifications for groundfish in the BSAI (71 FR 11541, March 8, 2006) are revised as follows: 5,500 mt to non-CDQ pollock and 0 mt to CDQ pollock.

The 2006 pollock incidental catch allowance in the BS was established as 44,967 mt by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006), in accordance with § 679.20(a)(5)(i)(A)(*1*) and the American Fisheries Act (AFA) (Public Law 105 277, Division C, Title II).

As of August 10, 2006, the Administrator, Alaska Region, NMFS, has determined that approximately 20,072 mt of pollock remain in the incidental catch allowance. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 14,000 mt of pollock specified in the incidental catch allowance will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 14,000 mt, of pollock from the incidental catch allowance to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A).

Pursuant to § 679.20(a)(5), Tables 3 and 10 of the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 11541, March 8, 2006) are revised for 2006 non-CDQ pollock and CDQ pollock allocations consistent with this reallocation. This reallocation results in proportional adjustments to the 2006 B season non-CDQ pollock directed fishery allocation (DFA) established at § 679.20(a)(5).

TABLE 3—2006 AND 2007 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2006 Allocations	2006 A season[1]		2006 B season[1]	2007 Allocations	2007 A season[1]		2007 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea	1,496,700	n/a	n/a	n/a	1,500,000	n/a	n/a	n/a
CDQ DFA	150,400	60,160	41,793	90,240	149,670	59,868	41,908	89,802
ICA	30,967	n/a	n/a	n/a	45,236	n/a	n/a	n/a
AFA Inshore	657,666	261,148	181,626	396,518	652,547	261,019	182,713	391,528
AFA Catcher/Processors[3]	526,133	208,918	145,301	317,215	522,038	208,815	146,171	313,223
Catch by C/Ps	481,412	191,160	n/a	290,252	477,664	191,066	n/a	286,599
Catch by CVs[3]	44,721	17,758	n/a	26,963	44,373	17,749	n/a	26,624
Unlisted C/P Limit[4]	2,631	1,045	n/a	1,586	2,610	1,044	n/a	1,566
AFA Motherships	131,533	52,230	36,325	79,304	130,509	52,204	36,543	78,306
Excessive Harvesting Limit[5]	256,503	n/a	n/a	n/a	228,391	n/a	n/a	n/a
Excessive Processing Limit[6]	439,720	n/a	n/a	n/a	391,528	n/a	n/a	n/a
Total Bering Sea DFA	1,465,733	582,456	405,045	883,277	1,454,764	581,906	407,334	872,858
Aleutian Islands subarea[1]	6,160	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	n/a	n/a	0	1,900	760	n/a	1,140
ICA	1,800	1,200	n/a	600	1,800	1,200	n/a	600
Aleut Corporation	5,500	4,000	n/a	1,500	15,300	9,800	n/a	5,500
Bogoslof District ICA[7]	10	n/a	n/a	n/a	10	n/a	n/a	n/a

[1]Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA - 10 percent and the ICA - 3.35 percent, is allocated as a DFA as follows: inshore component - 50 percent, catcher/processor component - 40 percent, and mothership component - 10 percent. In the Bering Sea subarea, the A season, January 20 - June 10, is allocated 40 percent of the DFA and the B season, June 10 - November 1, is allocated 60 percent of the DFA. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance - 10 percent and second the ICA - 1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2]In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3]Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4]Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5]Pursuant to § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6]Pursuant to § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7]The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

TABLE 10—2006 AND 2007 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories[1] (mt)	Percentage of inshore sector allocation	2006 Annual cooperative allocation (mt)	2007 Annual cooperative allocation (mt)
Akutan Catcher Vessel Association		31.145	204830	203,186
Arctic Enterprise Association		1.146	7,535	7,476
Northern Victor Fleet Cooperative		8.412	55,326	54,879
Peter Pan Fleet Cooperative		2.876	18,916	18,763
Unalaska Cooperative		12.191	80,173	79,533
UniSea Fleet Cooperative		25.324	166,549	165,211
Westward Fleet Cooperative		18.906	124,336	123,340
Open access AFA vessels		0	0	0
Total inshore allocation	875,572	100	657,666	652,388

[1]According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.≤

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Bering Sea and Aleutian Islands pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased B season pollock allocations while value is optimum.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–7052 Filed 8–16–06; 2:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 081406C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig gear in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2006 Atka mackerel TAC.

DATES: The effective dates are provided in Table 1 under the **SUPPLEMENTARY INFORMATION** section of this temporary action.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 TAC of Atka mackerel specified for other gear in the Eastern Aleutian District and the Bering Sea subarea was established as 6,868 metric tons (mt) by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10899, March 3, 2006). See § 679.20(a)(8)(ii) and (c)(3)(iii).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Acting Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 500 mt of the 2006 Atka

mackerel TAC for other gear in the Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,368 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels using other gear in the Eastern Aleutian District and the Bering Sea subarea.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after the closure of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either area 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

Action	Area	Effective Date[1]	
		From	To
Closing Atka Mackerel with gears other than jiggear	Eastern Aleutian District and the Bering Sea subarea	1200 hrs, September 2, 2006	2400 hrs, December 31, 2006
Opening the first directed fishery in the HLA	542	1200 hrs, September 4, 2006	1200 hrs, September 11, 2006
	543	1200 hrs, September 4, 2006	1200 hrs, September 11, 2006
Opening the second directed fishery in the HLA	542	1200 hrs, September 13, 2006	1200 hrs, September 20, 2006
	543	1200 hrs, September 13, 2006	1200 hrs, September 20, 2006

[1]Alaska local time≤

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (71 FR 46409, August 14, 2006).

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA limits of the B season allowance of the 2006 TACs in areas 542 and 543 are 11,100 mt and 4,301 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: for the first directed fishery in area 542, 5,550 mt; for the first directed fishery in area 543, 2,151 mt; for the second directed fishery in area 542, 5,550 mt; and for the second directed fishery in area 543, 2,150 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has establish the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea and the opening and closing of the fisheries for the HLA limits established for area 542 and area 543 pursuant to the 2006 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 14, 2006. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–13790 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 161
Monday, August 21, 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 39

[Docket No. FAA–2006–25645; Directorate Identifier 2005–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. This proposed AD would require implementing a corrosion prevention and control program (CPCP) either by accomplishing specific tasks or by revising the maintenance inspection program to include a CPCP. This proposed AD results from the determination that, as airplanes age, they are more likely to exhibit indications of corrosion. We are proposing this AD to prevent structural failure of the airplane due to corrosion.

DATES: We must receive comments on this proposed AD by September 20, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25645; Directorate Identifier 2005–NM–201–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on all Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. TCCA advises that, as airplanes age, they are more likely to exhibit indications of corrosion. Operators must implement a corrosion prevention and control program (CPCP) that identifies specific areas to be inspected to minimize and control deterioration of the airplane from corrosion. This condition, if not corrected, could result in structural failure of the airplane.

Relevant Service Information

Bombardier has issued Challenger 600 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 605 (CPCP), dated July 28, 2004 (for Model CL–600–1A11 (CL–600) airplanes); Challenger 601 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 601–5 (CPCP), dated July 28, 2004 (for Model CL–600–2A12 (CL–601) airplanes); and Challenger 601 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 601A–5 (CPCP), dated July 28, 2004 (for Model CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes). In this proposed AD, we refer to these publications as ''the Manual.''

Paragraph 6 ''Corrosion Levels'' of the Manual defines three levels of corrosion:

- Level 1 corrosion:
  1. Occurs between repetitive inspections and can be reworked within certain limits; or
  2. Exceeds allowable limits and is attributed to an event not typical of the usage of the other airplanes in

the operator's fleet; or

3. Exceeds allowable limits as a result of accumulated blend-out of light corrosion found in previous inspections such that the structural item must be reinforced or replaced.

- Level 2 corrosion occurs between repetitive inspections and requires a single rework that exceeds allowable limits, necessitating a repair or partial or complete replacement of a structural significant element.
- Level 3 corrosion is found during initial or repetitive inspections and is determined to be a potentially urgent unsafe condition necessitating expeditious action.

Paragraph 9 ''List of Tasks'' of the Manual contains the CPCP task numbers, description of the inspections for corrosion, repetitive intervals, and necessary re-protection actions.

TCCA mandated the Manual and issued Canadian airworthiness directive CF–2005–06, dated March 10, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require implementing a CPCP either by accomplishing specific tasks or by revising the maintenance inspection program to include a CPCP. The proposed AD would require you to use the Manual described previously to perform these actions. The proposed AD also would require you to report findings of Level 3 corrosion to the airplane manufacturer.

Differences Among the Proposed AD, the Manual, and the Canadian Airworthiness Directive

Although the Manual and Canadian airworthiness directive CF–2005–06 specify that all corrosion findings be reported to the airplane manufacturer, this proposed AD would only require reporting of Level 3 corrosion.

The Canadian airworthiness directive CF–2005–06 specifies to incorporate the CPCP within one year and then to accomplish CPCP tasks at the next corresponding maintenance review board (MRB) task or the next CPCP task interval. However, this proposed AD specifies accomplishing CPCP tasks at the next CPCP task interval specified in the applicable Manual or within 12 months, whichever occurs later. In developing an appropriate compliance time for this proposed, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators.

Clarification of Compliance Times in the Manual

The compliance times in the Manual are not clearly identified. In this proposed AD, we clarify that the times in the ''Interval'' column of the Manual are in flight hours unless there is an ''M'' adjacent to the number. If there is an ''M'' adjacent to the number, the time is in months. If there are two different numbers for a task, the number with a ''T'' adjacent to it is the threshold and the number with an ''R'' adjacent to it is the repetitive interval.

Costs of Compliance

This proposed AD would affect about 204 airplanes of U.S. registry. There are between 72 and 74 specific inspections, depending on the applicable Manual. The inspections would take about 74 work hours per airplane, per inspection cycle, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,207,680, or $5,920 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair):
Docket No. FAA–2006–25645; Directorate Identifier 2005–NM–201–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from the determination that, as airplanes age, they are more likely to exhibit indications of corrosion. We are issuing this AD to prevent structural failure of the airplane due to corrosion.

Compliance

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

Manual References

(f) The term ''the Manual,'' as used in this AD, means the documents specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable. Although the Manual specifies to submit certain information to the manufacturer, this AD requires reporting only Level 3 corrosion.

(1) For Model CL–600–1A11 (CL–600) airplanes: Challenger 600 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 605 (CPCP), dated July 28, 2004;

(2) For Model CL–600–2A12 (CL–601) airplanes: Challenger 601 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 601–5 (CPCP), dated July 28, 2004; and

(3) For Model CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes: Challenger 601 Time Limits/Maintenance Checks (CPCP) Supplement, PSP 601A–5 (CPCP), dated July 28, 2004.

Initial Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Perform each of the CPCP tasks, including re-protection actions, as applicable, specified in Paragraph 9 ''List of Tasks'' of the applicable Manual in accordance with the procedures specified in the applicable Manual.

(1) Within 12 months after the effective date of this AD.

(2) At the next CPCP task interval specified in the ''Interval'' column in the applicable table in Paragraph 9 ''List of Tasks'' of the applicable Manual. The times in the ''Interval'' column are in flight hours unless there is an ''M'' adjacent to the number. If there is an ''M'' adjacent to the number, the time is in months. If there are two different numbers for a task, the number with a ''T'' adjacent to it is the threshold and the number with an ''R'' adjacent to it is the repetitive interval.

Repetitive Inspections

(h) After accomplishment of each initial CPCP task required by paragraph (g) of this AD, except as provided by paragraph (i) of this AD: Repeat each of the CPCP tasks, and re-protection actions, as applicable, specified in Paragraph 9 ''List of Tasks'' of the applicable Manual at intervals not to exceed the compliance time specified in the ''Interval'' column in the applicable table in Paragraph 9 ''List of Tasks'' of the applicable Manual. The times in the ''Interval'' column are in flight hours unless there is an ''M'' adjacent to the number. If there is an ''M'' adjacent to the number, the time is in months. If there are two different numbers for a task, the number with a ''T'' adjacent to it is the threshold and the number with an ''R'' adjacent to it is the repetitive interval.

(i) After accomplishment of each initial CPCP task required by paragraph (g) of this AD, the FAA may approve the incorporation into the operator's approved maintenance/inspection program of either the CPCP specified in the applicable Manual and this AD, or an equivalent program that is approved by the FAA. In all cases, the initial CPCP task for each airplane area must be completed at the compliance time specified in paragraph (g) of this AD. For the purposes of this paragraph, the FAA is defined as the cognizant Flight Standards District Office.

(1) Any operator complying with paragraph (i) of this AD may use an alternative recordkeeping method to that otherwise required by section 91.417 (''Maintenance records'') or section 121.380 (''Maintenance recording requirements'') of the Federal Aviation Regulations (14 CFR 91.417 or 14 CFR 121.380, respectively) for the actions required by this AD, provided that the recordkeeping method is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. For the purposes of this paragraph, the FAA is defined as the cognizant Flight Standards District Office.

(2) After the initial accomplishment of the tasks required by paragraph (g) of this AD, any extension of the repetitive intervals specified in the applicable Manual must be approved by the FAA. For the purposes of this paragraph, the FAA is defined as the Manager, New York Aircraft Certification Office (ACO), FAA.

Corrective Actions

(j) If any corrosion is found during accomplishment of any action required by paragraph (g) or (h) of this AD: Before further flight, rework, repair, or replace, as applicable, all subject parts, in accordance with Paragraph 7 ''Application of the CPCP Check'' of the applicable Manual.

Reporting Requirements and Repetitive Actions for Remainder of Affected Fleet

(k) If any Level 3 corrosion, as defined in the Introduction of the applicable Manual, is found during accomplishment of any action required by this AD: Do paragraphs (k)(1), (k)(2), and (k)(3) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120–0056.

(1) Within 3 days after the finding of Level 3 corrosion, report findings to Bombardier in accordance with paragraph 7.J. of the applicable Manual.

(2) Within 10 days after the finding of Level 3 corrosion, either submit a plan to the FAA to identify a schedule for accomplishing the applicable CPCP task on the remainder of the airplanes in the operator's fleet that are subject to this AD, or provide data substantiating that the Level 3 corrosion that was found is an isolated case. The FAA may impose a schedule other than proposed in the plan upon finding that a change to the schedule is needed to ensure that any other Level 3 corrosion is detected in a timely manner. For the purposes of this paragraph, the FAA is defined as the cognizant Principal Maintenance Inspector (PMI) for operators that are assigned a PMI (*e.g.*, part 121, 125, and 135 operators), and the cognizant Flight Standards District Office for other operators (*e.g.*, part 91 operators).

(3) Within the time schedule approved in accordance with paragraph (k)(2) of this AD, accomplish the applicable task on the remainder of the airplanes in the operator's fleet that are subject to this AD.

Limiting Future Corrosion Findings

(l) If corrosion findings that exceed Level 1 are found in any area during any repeat of any CPCP task after the initial accomplishment required by paragraph (g) of this AD: Within 60 days after such finding, implement a means approved by the FAA to reduce future findings of corrosion in that area to Level 1 or better. For the purposes of this paragraph, the FAA is defined as the cognizant PMI for operators that are assigned a PMI (*e.g.*, part 121, 125, and 135 operators), and the cognizant Flight Standards District Office for other operators (*e.g.*, part 91 operators).

Scheduling Corrosion Tasks for Transferred Airplanes

(m) Before any airplane subject to this AD is transferred and placed into service by an operator: Establish a schedule for accomplishing the CPCP tasks required by this AD in accordance with paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes on which the CPCP tasks required by this AD have been accomplished previously at the schedule established by this AD: Perform the first CPCP task in each area in accordance with the previous operator's schedule, or in accordance with the new operator's schedule, whichever results in an earlier accomplishment of that CPCP task. After the initial accomplishment of each CPCP task in each area as required by this paragraph, repeat each CPCP task in accordance with the new operator's schedule.

(2) For airplanes on which the CPCP tasks required by this AD have not been accomplished previously, or have not been accomplished at the schedule established by this AD: The new operator must perform each initial CPCP task in each area before further flight or in accordance with a schedule approved by the FAA. For the purposes of this paragraph, the FAA is defined as the cognizant PMI for operators that are assigned a PMI (*e.g.*, part 121, 125, and 135 operators), and the cognizant Flight Standards District Office for other operators (*e.g.*, part 91 operators).

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(o) Canadian airworthiness directive CF–2005–06, dated March 10, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13713 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25643; Directorate Identifier 2006–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 and ERJ 190 airplanes. This proposed AD would require repetitive inspections to detect damaged smoke seals in the aft avionics compartment, repair/replacement if any damage is found, and reinforcement if no damage is found. This proposed AD also would require eventual replacement of all smoke seals in the aft avionics compartment with new, improved seals having new part numbers, which would terminate the repetitive inspections. This proposed AD results from a report of damaged smoke seals in the aft avionics compartment of the affected airplanes. We are proposing this AD to prevent smoke from penetrating into the passenger cabin during a fire in the avionics compartment.

DATES: We must receive comments on this proposed AD by September 20, 2006.

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

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25643; Directorate Identifier 2006–NM–135–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model ERJ 170 and ERJ 190 airplanes. The DAC advises that damaged smoke seals have been found in the aft avionics compartment of the affected airplanes. The damage was caused by a design problem. This condition, in the event of a fire in the avionics compartment, could result in smoke penetrating into the passenger cabin.

Relevant Service Information

EMBRAER has issued the service bulletins shown in the following table.

EMBRAER SERVICE BULLETINS

Airplane	EMBRAER Service Bulletins for inspections	EMBRAER Service Bulletins for replacement
Model ERJ 170 airplanes	170–21–0017, Revision 01, dated February 15, 2006 ...	170–21–0018, Revision 01, dated February 15, 2006.
Model ERJ 190 airplanes	190–21–0003, Revision 01, dated February 15, 2006 ...	190–21–0004, dated December 2, 2005.

The service bulletins for the inspections describe procedures for repetitive inspections for damaged smoke seals in the aft avionics compartment, and corrective actions. If no damage is found, these service bulletins specify reinforcing around the Velcro fasteners by installing silver tape. If damage is found and all damage is within the limits shown in the following table, the corrective action is repairing the damage before further flight as

specified in the inspection service bulletins. This repair includes installing silver tape along the torn section of the Velcro fasteners to reinforce a torn area; and installing silver tape along the un-bonded Velcro fastener; as applicable. If any damage is outside the damage limits, these service bulletins state that the seal must be replaced with a new, improved seal, having a new part number, in accordance with the replacement service bulletins. The service bulletins for the replacement refer to the applicable aircraft maintenance manual tasks for specific instructions.

DAMAGE LIMITS SPECIFIED IN SERVICE BULLETINS 170–21–0017 AND 190–21–0003

Damage area	Damage type	Damage limit
Seal	Tear	Tear must not exceed 200 millimeters (mm) in length, regardless of direction; and edges must not be less than 10 mm from the seal extremities.
Velcro Fastener	Un-bonding from the seal edge	Un-bonded section must not exceed 300 mm in length.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directives 2006–05–04 (for Model ERJ170 airplanes) and 2006–05–07 (for Model ERJ190 airplanes), both effective June 14, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Brazilian Airworthiness Directives.''

Difference Between Proposed AD and the Brazilian Airworthiness Directives

The Brazilian airworthiness directives are applicable to ''all EMB–170( ) aircraft in operation,'' and to ''all EMB–190( ) aircraft in operation.'' However, this does not agree with the effectivity of the EMBRAER service bulletins, which state that only certain Model EMB–170 and EMB–190 airplanes are affected. The service bulletins identify the affected airplanes by serial number. This proposed AD would be applicable only to the airplanes identified in the service bulletins. This difference has been coordinated with the DAC.

Clarification of Reinforcement Action

If no damage is found during the detailed inspections specified in this proposed AD, the service bulletins specify reinforcing around the Velcro fasteners by installing silver tape. However, EMBRAER Service Bulletins 170–21–0017 and 190–21–0003 are not specific as to whether this reinforcement must be repeated after each repetitive inspection during which no damage is found. Therefore, this proposed AD specifies that the reinforcement is required only one time, and thereafter as necessary depending on inspection findings.

Clarification of Inspection Terminology

EMBRAER Service Bulletins 170–21–0017 and 190–21–0003 do not specify the inspection type for finding damage to the smoke seals. In this proposed AD we refer to that inspection as a detailed inspection to parallel the inspection type specified in the Brazilian airworthiness directives. We have included the definition for a detailed inspection in a note in this proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour ($)	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	1	80	None	$80, per inspection cycle	78	$6,240, per inspection cycle.
Reinforcement	1	80	Operator supplied.	$80, per inspection cycle	78	$6,240.
Replacement	8	80	$244 to $265	$884 to $905	78	$68,952 to $70,590.

Authority for This Rulemaking

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

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

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–25643; Directorate Identifier 2006–NM–135–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRPLANES AFFECTED BY THIS AD

EMBRAER model—	As identified in EMBRAER Service Bulletin—
ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes.	170–21–0017, Revision 01, dated February 15, 2006.
ERJ 190–100 STD, –100 LR, and –100 IGW airplanes.	190–21–0003, Revision 01, dated February 15, 2006.

Unsafe Condition

(d) This AD results from a report of damaged smoke seals in the aft avionics compartment of the affected airplanes. We are issuing this AD to prevent smoke from penetrating into the passenger cabin during a fire in the avionics compartment.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For the inspections, applicable corrective actions, and reinforcement specified in paragraph (g) of this AD: EMBRAER Service Bulletins 170–21–0017, Revision 01, dated February 15, 2006 (for Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes); and 190–21–0003, Revision 01, dated February 15, 2006 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes); and

(2) For the replacement specified in paragraph (h) of this AD: EMBRAER Service Bulletins 170–21–0018, Revision 01, dated February 15, 2006 (for Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes); and 190–21–0004, dated December 2, 2005 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes).

Inspections and Reinforcement

(g) Within 600 flight hours after the effective date of this AD: Do a detailed inspection for damaged smoke seals in the aft avionics compartment; and, following the inspection, before further flight, reinforce around the Velcro fasteners by installing silver tape if no damage is found, and do all applicable corrective actions if any damage is found. Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours until the replacement required by paragraph (h) of this AD is done. Where the applicable service bulletin specifies reinforcing around the Velcro fasteners by installing silver tape if no damage is found during the detailed inspection, that reinforcement must be done the first time; it is required again only if damage is found during any repeat inspection. Do all actions in accordance with the applicable service bulletin specified in paragraph (f)(1) of this AD. If any damage exceeds the limits specified in the applicable service bulletin: Before further flight, do the replacement in paragraph (h) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Replacement

(h) Within 6,000 flight hours after the effective date of this AD: Replace the smoke seal in the aft avionics compartment with a new improved seal, having a new part number, in accordance with Accomplishment Instructions of the applicable service bulletin specified in paragraph (f)(2) of this AD. Doing this replacement terminates the repetitive inspection requirements of paragraph (g) of this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install a smoke seal in the aft avionics compartment on any airplane, that has part number 170–96563–509, –511, –513, –515, –517, –519, –521, or –523; 171–04768–501, –503, –505, or –507; 190–15062–501, –503, –505, or –507; or 190–15902–501, –503, –505, or –507.

Actions Accomplished According to Previous Issues of Service Bulletins

(j) Actions done before the effective date of this AD in accordance with the applicable service bulletins identified in Table 2 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

EMBRAER Service Bulletin	Date
170–21–0017	Dec. 29, 2005.
170–21–0018	Dec. 2, 2005.
190–21–0003	Dec. 29, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) Brazilian airworthiness directives 2006–05–04 (for Model ERJ170 airplanes), and 2006–05–07 (for Model ERJ190 airplanes), both effective June 14, 2006, also address the subject of this AD.

Issued in Renton, Washington, on August 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13714 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25642; Directorate Identifier 2006–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This proposed AD would require inspecting certain power feeder wire bundles for damage, inspecting the support clamps for these wire bundles to determine whether the clamps are properly installed, and performing corrective actions if necessary. This proposed AD results from a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. We are proposing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 5, 2006.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25642; Directorate Identifier 2006–NM–121–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that a power feeder wire bundle chafed against the number six auxiliary slat track at front spar station (FSS) 148.90 on a Boeing Model 757 airplane. Two of the three phases of the power feeder wire bundle were worn to the conductor. The chafing caused electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. Investigation revealed that the support clamp for the power feeder wire bundle was not properly installed in the attach bracket, which resulted in insufficient clearance between the power feeder wire bundle and the auxiliary slat track. Arcing of the electrical wires in the power feeder wire bundle could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems which could reduce controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletins 757–24–0105 and 757–24–0106, both Revision 2, both dated April 20, 2006. The service bulletins describe procedures for inspecting for damage (including but not limited to chafing) of power feeder wire bundles W3312 and W3412 at FSS 148.90 in the left and right wings; inspecting support clamps for these wire bundles to determine whether the clamps are properly installed in the attach bracket; and performing corrective actions if necessary.

For airplanes identified as Group 1 in Special Attention Service Bulletin 757–24–0105, proper installation in the left wing consists of the support clamp being installed in the upper hole of the lower attach bracket, with the lobe of the support clamp installed in the ''up'' position. Proper installation in the right wing on Group 1 airplanes consists of the support clamp being installed in the lower hole of the support bracket. For airplanes other than those in Group 1, proper installation on both wings consists of the support clamp being installed in the lower hole of the attach bracket.

Corrective actions are as follows:

- Repairing any damage of the power feeder wire bundles.
- Installing in the correct hole of the attach bracket any support clamp found installed elsewhere, and installing a spacer if one is not already installed.

• Installing a rivet to plug the open hole in the attach bracket.

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

FAA's Determination and Requirements of the Proposed AD

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

Clarification of Inspection Terminology

The service bulletins include the instruction to inspect the wire bundles and support clamps, but the Work Instructions do not specifically state what type of inspection is necessary. However, the term ''general visual inspection'' is defined under paragraph 3.A., General Information, in the Accomplishment Instructions of the service bulletins. Thus, this proposed AD refers to these inspections as ''general visual inspections.''

Costs of Compliance

There are about 902 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 631 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $100,960, or $160 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–25642; Directorate Identifier 2006–NM–121–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 5, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; as identified in the service bulletins listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

Airplane model	Boeing Special Attention Service Bulletin	Revision level	Date
757–200, –200PF, –200CB series	757–24–0105	2	April 20, 2006.
757–300 series	757–24–0106	2	April 20, 2006.

Unsafe Condition

(d) This AD results from a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. We are issuing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200, –200PF, and –200CB series airplanes: Boeing Special Attention Service Bulletin 757–24–0105, Revision 2, dated April 20, 2006; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–24–0106, Revision 2, dated April 20, 2006.

One-Time Inspections and Corrective Actions

(g) Within 24 months after the effective date of this AD, perform a general visual inspection for damage (including but not limited to chafing) of power feeder wire

bundles W3312 and W3412 at front spar station 148.90 in the left and right wings, and a general visual inspection of the support clamps for those power feeder wire bundles to determine whether the clamps are properly installed, and, before further flight, do all applicable corrective actions. Do these actions by doing all of the applicable actions in the service bulletin.

Actions Accomplished Previously

(h) Inspections and corrective actions done before the effective date of this AD in accordance with the service information listed in Table 2 of this AD are acceptable for compliance with the corresponding actions required by this AD.

TABLE 2.—OTHER ACCEPTABLE SERVICE BULLETIN REVISIONS

Boeing Special Attention Service Bulletin	Revision level	Date
757–24–0105	Original	September 30, 2004.
757–24–0105	1	June 23, 2005.
757–24–0106	Original	September 30, 2004.
757–24–0106	1	June 23, 2005.

Special Flight Permit

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the generator served by the power feeder wire bundles specified in paragraph (g) of this AD is disconnected.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on August 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13730 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24878; Airspace Docket No. 06–AWP–4]

RIN 2120–AA66

Proposed Revision of Class E Airspace; Mountain Home, ID

AGENCY Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Mountain Home, ID, beginning at 1,200 feet above ground level (AGL), replacing the existing Class G uncontrolled airspace. This airspace action will accommodate the terminal environment transition between Salt Lake Air Route Traffic Control Center (ARTCC) and Mountain Home AFB Radar Approach Control (RAPCON) by placing aircraft in controlled airspace during the transfer of aircraft radar identification between the facilities. In addition, a review of the legal description revealed that it does not reflect the correct airport reference point (ARP) of Mountain Home Municipal Airport and geographic position of the Sturgeon Non-Directional Beacon (NDB). This action will correct those minor discrepancies.

DATES: Comments must be received on or before October 5, 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–2006–24878; Airspace Docket No. 06–AWP–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

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

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 (FAA Docket No. FAA–2006–24878 and Airspace Docket No. 06–AWP–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–24878 and Airspace Docket No. 06–AWP–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comment received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. 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 **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Mountain Home AFB RAPCON works daily with Salt Lake ARTCC, transferring traffic between the facilities' airspace areas. The RAPCON's airspace has been charted into the ARTCC mapping file structure and extended to join with the Owyhee MOA boundary to the southwest of Mountain Home AFB. This wedge of airspace is outside the current 40 DME arc from the Mountain Home TACAN which accommodated the former approach control boundary to the southwest. The 46 DME arc brings that wedge into Class E airspace and is a fluid transition from adjoining Class E airspace along V113 to the southwest and around to V253 to the southeast, incorporating the northern portion of the Jarbridge MOA, accommodating the terminal environment transition and making control procedures more operationally efficient.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise the Class E airspace area with a base altitude of 1,200 feet AGL in the vicinity of Mountain Home AFB, ID. Class E airspace is used to transition to and from the terminal or enroute environment, allowing a buffer for arriving and departing IFR aircraft from uncontrolled to controlled airspace. A review of the airspace in southern Idaho revealed a large area of uncontrolled (Glass G) airspace immediately adjacent to the (controlled) Class E airspace currently utilized by Mountain Home AFB RAPCON. Because this airspace is Class G below 14,500 feet mean sea level (MSL), Mountain Home AFB RAPCON does not have the authority to initiate IFR (Instrument Flight Rules) control instructions and vector aircraft transferred to them from Salt Lake ARTCC. IFR operations can take place in Class G, but the ability of the approach control to provide vectors, as an example, should not happen until within the confines of the approach control delegated airspace. The 46 DME arc provides for this buffer where transition from Class G to E can take place (arrival or departure), and allows the approach control in question to provide that vector within Class E. The Mountain Home AFB RAPCON airspace extends only to the 40 DME arc, and therefore, has no safe buffer currently established.

The proposed airspace revision incorporates into Class E airspace that portion of Mountain Home AFB RAPCON delegated airspace that was extended to join with the Owyhee MOA boundary to the Southwest of Mountain Home AFB. This wedge of airspace is outside the current 40 DME arc from the Mountain Home TACAN, which accommodated the former approach control boundary to the southwest.

In addition, the 6500 feet MSL Class E airspace to the southeast within the Jarbridge Military Operations Area (MOA) will be incorporated into this 1200 foot AGL Class E airspace. Neither Mountain Home AFB RAPCON nor Salt Lake ARTCC utilize this airspace at 6500 feet MSL, and containing it at 1200 feet AGL will allow Mountain Home AFB RAPCON to vector aircraft to Jarbridge MOA at lower altitudes.

Class E enroute domestic airspace areas are published in Paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 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 this Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND 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., 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 15, 2005, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Mountain Home, ID [Revised]

Mountain Home AFB, ID
(Lat. 43°02′37″ N., long. 115°52′21″ W.)
Mountain Home TACAN
(Lat. 43°02′26″ N., long. 115°52′28″ W.)
Mountain Home Municipal Airport
(Lat. 43°07′53″ N., long. 115°43′47″ W.)
Sturgeon NDB
(Lat. 43°06′48″ N., long. 115°39′31″ W.)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and 7.9 miles southwest of the Mountain Home AFB Tacan 135° and 315° radials extending from 15.7 miles southeast to 15.7 miles northwest of the TACAN, and within a 7.4-mile radius of the Mountain Home Municipal Airport, thence extending east of the radius 3.1 miles each side of the Sturgeon NDB 112° bearing to 7.4 miles east of Sturgeon NDB; that airspace extending upward from 1,200 feet above the surface bounded on the northeast by the southwest edge of V–253; to long. 115° 00′11″ W.; south to lat. 42°24′00″ N.; east to lat. 42°24′08″ N., long. 115°18′09″ W.; thence on the southeast, south, and west by a 46.0-mile radius of Mountain Home AFB; on the west by the southeast edge of V–113; northeast to the southwest edge of V–253.

* * * * *

Issued in Los Angeles, California, on August 7, 2006.

Leonard A. Mobley,

Acting Director, Western Terminal Operations.

[FR Doc. 06–7063 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04–7–000]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

August 14, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking: Extension of reply comment deadline.

SUMMARY: On May 19, 2006, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to amend its regulations to revise Subpart H to Part 35 of the Code of Federal Regulations governing market-based rates for public utilities pursuant to the Federal Power Act. 71 FR 33101 (2006). The date for filing

reply comments on the proposed rule is extended at the request of the Edison Electric Institute.

DATES: Reply comments should be filed on or before September 20, 2006.

ADDRESSES: You may submit reply comments, identified by Docket No. RM04–7–000, by one of the following methods:

• *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble of the NOPR.

• *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426. Please refer to the Comment Procedures Section of the preamble of the NOPR for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Arnold (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8818.

Market-Based Rates for Public Utilities; Notice of Extension of Time

On August 10, 2006, Edison Electric Institute (EEI) filed a motion for an extension of time to file reply comments in response to the Commission's Notice of Proposed Rulemaking issued May 19, 2006, in the above-docketed proceeding. *Market-Based Rates for Public Utilities*, 119 FERC ¶ 61,210 (2006). EEI states that because of the large number of substantive issues that are addressed in the NOPR and the voluminious nature of the initial comments that were filed in this docket, additional time is needed to prepare and file responsive comments.

Upon consideration, notice is hereby given that an extension of time for filing reply comments is granted to and including September 20, 2006, as requested by EEI.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13703 Filed 8–18–06; 8:45 am]

BILLING CODE 6717–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Temporary Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Extend the Designation of the Lower Delaware River as a Special Protection Water

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Delaware River Basin Commission (''Commission'' or DRBC) will hold a public hearing to receive comments on a proposed amendment to the Commission's *Water Quality Regulations*, *Water Code*, and *Comprehensive Plan* to extend through September 30, 2007 the temporary classification of the Lower Delaware River as Significant Resource Waters (SRW). The SRW classification was enacted by Commission Resolution No. 2005–2 on January 19, 2005 and initially was due to expire on September 30, 2005. Based upon analysis of additional water quality data, the Commission proposed to decide by the latter date whether to classify certain sections of the Lower Delaware River as Outstanding Basin Waters (OBW) and whether to make the SRW classification permanent for some or all of the Lower Delaware. By Resolution No. 2005–15 approved on September 26, 2005, the temporary classification was extended through September 30, 2006 in order to allow additional time for the Commission to evaluate implementation options and establish numeric values for existing water quality. In order to complete its evaluation of implementation approaches, the Commission is today proposing to extend the temporary classification for up to twelve months more. If approved, the classification would thus expire on September 30, 2007 unless the Commission should either permanently classify the Lower Delaware River or once again extend the temporary classification by rule amendment prior to that date.

Permanent classification is anticipated, following an additional notice and comment rulemaking when the Commission has resolved remaining implementation issues. Extending the temporary classification will help to protect the exceptional scenic, recreational and water quality values of the Lower Delaware from degradation in the interim.

DATES: The public hearing will take place on Wednesday, September 27, 2006 during the Commission's regular business meeting, beginning at 1:30 p.m. Driving directions are available on the Commission's Web site, *http://www.drbc.net.* Persons wishing to testify are asked to register in advance with the Commission Secretary, at (609) 883–9500 ext. 203. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated.

ADDRESSES: The public hearing will take place at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Directions are posted on the Commission's Web site, *http://www.drbc.net.* The complete text of Resolutions Nos. 2005–2, temporarily amending the *Water Quality Regulations*, *Water Code*, and *Comprehensive Plan* of the Commission by designating the Lower Delaware River a Special Protection Water, and 2005–15, extending the temporary amendment approved by Resolution No. 2005–2, are available on the Commission's Web site, *http://www.drbc.net*, or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360. Maps depicting the designated area are also available on the Web site or upon request.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, at 609–883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: The Lower Delaware River extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile (RM) 209.4 to the head of tide at Trenton, New Jersey, RM 144.4. The effect of temporary classification of the Lower Delaware as Significant Resource Waters (SRW) has been to make this portion of the main stem Delaware River and its drainage area subject to all applicable provisions of the Commission's Special Protection Waters regulations, Section 3.10.3A.2 of the Commission's *Water Quality Regulations*, except those that depend for implementation upon the use of numeric values for existing water quality.

Key provisions of the Special Protection Waters Regulations that will continue to apply within the drainage area to the Lower Delaware River if the proposed extension of the SRW classification is approved include but are not limited to the following:

Subsections 3.10.3A.2.c.1 through 3, in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as Special Protection Waters until all non-discharge-load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility; subsections 3.10.3A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and subsections 3.10.3A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan (NPSP) for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a NPSP approved by the Commission.

Previous notices concerning designation of the Lower Delaware River as Special Protection Waters were published in the **Federal Register** on September 23, 2004 (69 FR 57008) and August 22, 2005 (70 FR 48923). The proposed designation and extension, as well as the final rules establishing and extending temporary designation, approved by DRBC Resolutions Nos. 2005–2 and 2005–15 respectively, were also published on the Commission's Web site, *http://www.drbc.net.*

Dated: August 14, 2006.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E6–13699 Filed 8–18–06; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–021]

RIN 1625–AA09

Drawbridge Operation Regulations; St. Croix River, Prescott, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Prescott Highway Bridge, across the St. Croix River, Mile 0.3, at Prescott, Wisconsin. Under our proposed rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from November 1, 2006 to April 1, 2007. This proposed rule would allow the bridge owners to make necessary repairs to the bridge.

DATES: Comments and related material must reach the Coast Guard on or before September 20, 2006.

ADDRESSES: You may mail comments and related material to Commander (dwb), Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–06–021), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in a unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On March 26, 2005, the Wisconsin Department of Transportation requested a temporary change to the operation of the Prescott Highway Bridge across the St. Croix River, Mile 0.3 at Prescott, Wisconsin, to allow the drawbridge to remain in the closed-to-navigation position for a 5-month period while the electrical and hydraulic systems are overhauled. Navigation on the waterway in vicinity of the bridge consists of excursion boats and recreational watercraft, neither of which will be impacted by the closure due to winter weather and frozen river conditions. Currently, the draw opens on signal for passage of river traffic from April 1 to October 31, 8 a.m. to midnight; from midnight to 8 a.m. the draw shall open on signal if notification is made prior to 11 p.m. From November 1 to March 31, the draw shall open on signal if at least 24 hours notice is given. The Wisconsin Department of Transportation requested the drawbridge be permitted to remain closed to navigation from November 1, 2006, to April 1, 2007.

Discussion of Proposed Rule

The proposed rule requires the draw span to be closed to navigation for five months, November 1, 2006 to April 1, 2007. This closure will enable workers to rehabilitate critical electrical and hydraulic systems which control draw span operation. This temporary change will not cause navigation problems because the closure is only in effect during the winter months when the river is frozen and vessels are absent.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This proposed rule would only be in effect during the coldest months of the year when ice prevents vessel movements. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not

have a significant economic impact on a substantial number of small entities. This proposed rule would be in effect for 5 months during the early winter months when the river is frozen over and navigation is practically at a standstill. The Coast Guard expects the impact of this action to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effect on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District Bridge Branch, at (314) 269–2378. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, 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 made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e) of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 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 November 1, 2006, to April 1, 2007, in § 117.667, suspend paragraph (a) and add paragraphs (d) and (e) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(d) The draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, and the Hudson Railroad Bridge, Mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) Midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(e) The draw of the Prescott Highway Bridge, Mile 0.3, need not open for river traffic and may be maintained in the closed-to-navigation position from November 1, 2006 to April 1, 2007.

Dated: August 7, 2006.

J.R. Whitehead,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. E6–13777 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 262

[EPA–HQ–RCRA–2003–0012; FRL–8211–7]

RIN 2050–AG18

Standards Applicable to Generators of Hazardous Waste; Subpart K—Standards Applicable to Academic Laboratories; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing that the comment period to the proposed rule entitled Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Academic Laboratories published on May 23, 2006 (71 FR 29711) is being extended until September 20, 2006. In the proposed rule EPA is requesting comment on alternative options for proposed laboratory requirements for colleges and universities. In addition, the proposal requests comment on expanding the rule to include other types of laboratories that operate and have waste generation patterns similar to college and university laboratories.

DATES: The comment period for this proposed rule is extended from the original closing date of August 21, 2006, to September 20, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2003–0012 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Mail:* U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–RCRA–2003–0012, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

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 *http://www.regulations.gov* are not affected by the flooding and will remain the same.

- *Hand Delivery:* In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–RCRA–2003–0012, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2003–0012. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305W), Attention Docket ID No. EPA–HQ–RCRA–2003–0012, 1200 Pennsylvania Avenue, Washington, DC 20460. Clearly mark the part or all of the information that you claim to be CBI. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. A

reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Patricia Mercer at (703) 308–8408, or *mercer.patricia@epa.gov*, Office of Solid Waste (MC: 5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: *Comment Period.* We are extending the comment period by 30 days in response to a request from the National Association of College and University Business Officers (NACUBO) on behalf of the American Council on Education (ACE), the Campus Safety, Health, and Environmental Management Association (CSHEMA), the Campus Consortium for Environmental Excellence (C2E2), and the National Association of College and University Business Officers for more time to respond to issues in the proposed rule published on May 23, 2006 (71 FR at 29712). Therefore, the public comment period will now end on September 20, 2006.

Regulated Entities. Entities potentially affected by this proposed action are generators of unwanted materials, as defined in this proposal, from college and university laboratories. College and university laboratories, as defined under this proposal, include laboratories associated with a private or public, post-secondary, degree-granting, academic institution that is accredited by an accrediting agency listed annually by the U.S. Department of Education. Only those colleges and universities which have laboratories on their campuses would be covered by this alternate approach; laboratories not located at colleges or universities would not be covered. This proposed action is optional in that colleges and universities may elect to have their laboratories remain regulated under current RCRA generator regulations as set forth in 40 CFR 262.11 and 262.34(c), or may choose to manage their hazardous wastes according to this alternative regulatory approach. (In RCRA authorized states, today's proposed action would be an option once it has been adopted by the state in which the college or university resides.) To determine whether a college or university laboratory is covered by this action, interested parties should examine 40 CFR part 262, subpart K carefully. If there are questions regarding the applicability of the proposed rule to a particular entity, consult the person listed in the section of this preamble entitled **FOR FURTHER INFORMATION CONTACT**.

Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the address listed in the **ADDRESSES** section of this document. Clearly mark the part or all 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.

List of Subjects in 40 CFR Parts 261 and 262

Environmental protection, Standards applicable to generators of hazardous wastes.

Dated: August 16, 2006.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E6–13854 Filed 8–18–06; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1621

Client Grievance Procedure

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation's regulation on client grievance procedures. These proposed changes are intended to improve the utility of the regulation for grantees and their clients and applicants for service in the current operating environment. In particular, LSC is proposing changes to clarify what procedures are available to clients and applicants, to emphasize the importance of the grievance procedure for clients and applicants and to add clarity and flexibility in the application of the requirements for hotline and other programs serving large and widely dispersed geographic areas.

DATES: Comments on this NPRM are due on September 20, 2006.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202–295–1624 (ph); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Legal Services Corporation's (LSC) regulation on client grievance procedures, 45 CFR part 1621, adopted in 1977 and not amended since that time, requires that LSC grant recipients establish grievance procedures pursuant to which clients and applicants for service can pursue complaints with recipients related to the denial of legal assistance or dissatisfaction with the legal assistance provided. The regulation is intended to help ''insure that legal services programs are accountable to those whom they are expected to serve.'' 42 FR 37551 (July 22, 1977).

As noted above, part 1621 has not been amended since its original adoption nearly 30 years ago. A Notice of Proposed Rulemaking (NPRM) was published in 1994 which would have instituted some more specific requirements for the grievance process and clarified the situations in which access to the grievance process is appropriate. However, due to the significant legislative activity in 1995 and 1996, no final action was ever taken on the 1994 NPRM and the original regulation has remained in effect.

As part of a staff effort in 2001 and 2002 to conduct a general review of LSC's regulations, the Regulations Review Task Force found that a number of the issues identified in the 1994 NPRM remained extant. The Task Force recommended in its Final Report (January 2002) that part 1621 be considered a higher priority item for rulemaking. Representatives of the grantee community agreed at that time that rulemaking to revise and update part 1621 was appropriate. The then-Board of Directors accepted the report and placed part 1621 on its priority rulemaking list. No action was taken on this item prior to the appointment of the current Board of Directors.

After the appointment of the current Board of Directors, LSC Management recommended to the Board that a rulemaking to consider revision of part 1621 was still appropriate. The Board of Directors agreed and on October 29, 2005, the Board of Directors directed that LSC initiate a rulemaking to

consider revisions to LSC's regulation on client grievance procedures, 45 CFR part 1621. The Board further directed that LSC convene a Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any Notice of Proposed Rulemaking (NPRM). LSC convened a Rulemaking Workshop on January 18, 2006, and provided a report to the Committee at its meeting on January 27, 2006. As a result of that Workshop and report the Board directed that LSC convene a second Rulemaking Workshop and report back to the Operations & Regulations Committee prior to the development of any NPRM. LSC convened a second Rulemaking Workshop on March 23, 2006 and provided a report to the Committee at its meeting on April 28, 2006. As a result of the second Workshop and report, the Board directed that a Draft NPRM be prepared. The Committee considered the Draft NPRM at its meeting of July 28, 2006 and the Board approved this NPRM for publication and comment at its meeting of July 29, 2006.

Summary of the Rulemaking Workshops

LSC convened the first Part 1621 Rulemaking Workshop on January 18, 2006. The following persons participated in the Workshop: Gloria Beaver, South Carolina Centers for Equal Justice Board of Directors (client representative); Steve Bernstein, Director, Legal Services of New York—Brooklyn; Colleen Cotter, Director, The Legal Aid Society of Cleveland; Irene Morales, Director, Inland Counties Legal Services; Linda Perle, Senior Counsel, Center for Law and Social Policy; Melissa Pershing, Director, Legal Services Alabama; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, National Legal Aid and Defenders Association Client Policy Group (client representative); Chuck Wynder, Acting Vice President, National Legal Aid and Defenders Association; Steven Xanthopoulous, Director, West Tennessee Legal Services; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, Senior Assistant General Counsel, LSC Office of Legal Affairs; Bert Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Mike Genz, Director, LSC Office of Program Performance; Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs; and Karena Dees, Staff Attorney, LSC Office of Inspector General.

The discussion was wide-ranging and open. The participants first discussed the importance of and reason for having a client grievance process. There was general agreement that the client grievance process is important to give a voice to people seeking assistance from legal services programs and to afford them dignity. The client grievance process also helps to keep programs accountable to their clients and community. It was generally agreed that the current regulation captures this purpose well. However, it was noted that the client grievance process also can be an important part of a positive client/applicant relations program and serve as a source of information for programs and boards in assessing service and setting priorities. This potential is not currently reflected in the regulation.

The participants noted that the vast majority of complaints received involve complaints regarding the denial of service, rather than complaints over the manner or quality of service provided. The vast majority of complaints over the manner and quality of service provided are resolved at the staff level (including with the involvement of the Executive Director); complaints which need to come before the governing body's grievance committee(s) are few and far between. It was noted that many recipients have the experience of receiving multiple complaints over time from the same small number of individuals.

In the course of the discussion, the group discussed a variety of other issues related to the client grievance process. The group also considered the fact that some of the issues raised, although important, may not be easily or most appropriately addressed in the text of the regulation. Some of these issues are summarized as follows:

- Whether programs can be more ''proactive'' in making clients and applicants aware of their rights under the client grievance procedure, but do so in a positive manner that does not create a negative atmosphere at the formation of the attorney-client relationship. It was noted that while informing clients of their rights can be empowering, suggesting at the outset that they may not like the service they receive is not conducive to a positive experience.
- The appropriate role of the governing body in the client grievance/client relations process;
- Challenges presented in providing proper notice of the client grievance procedure to applicants and clients who are served only over the telephone and/or e-mail/internet interface;
- Application of the process to Limited English Proficiency clients and applicants;
- Whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g., by a higher proportion of clients than the governing body has generally;
- Challenges presented by a requirement for in-person hearing and what other options may be appropriate;
- Whether the limitation of the grievance process related to denials of service to the three enumerated reasons for denial in the current rule is too limited given the wide range of reasons a program may deny someone service;
- Whether the grievance process should include cases handled by non-staff such as PAI attorneys, volunteers, attorneys on assignment to the grantee (often as part of a law firm pro bono program);

Finally, the group was in general agreement that additional opportunity for comment and fact finding would prove useful to both LSC and the legal services community before LSC committed to moving ahead with the development of a Notice of Proposed Rulemaking.

LSC convened its second Part 1621 Rulemaking Workshop March 23, 2006. The following persons participated in the second Workshop: Claudia Colindres Johnson, Hotline Director, Bay Area Legal Aid (CA); Terrence Dicks, Client Representative, Georgia Legal Services; Breckie Hayes-Snow, Supervising Attorney, Legal Advice and Referral Center (NH); Norman Janes, Executive Director, Statewide Legal Services of Connecticut; Harry Johnson, Client Representative, NLADA Client Policy Group; Joan Kleinberg, Managing Attorney, CLEAR, Northwest Justice Project (WA); George Lee, Client Representative, Kentucky Clients Council; Richard McMahon, Executive Director, New Center for Legal Advocacy (MA); Linda Perle, Senior Counsel, Center for Law and Social Policy; Peggy Santos, Client Representative, Massachusetts Legal Aid Corporation; Don Saunders, Director, Civil Legal Services, National Legal Aid and Defender Association; Rosita Stanley, Client Representative, NLADA Client Policy Group; Helaine Barnett, LSC President (welcoming remarks only); Karen Sarjeant, LSC Vice President for Programs and Compliance; Charles Jeffress, LSC Chief Administrative Officer; Mattie Condray, Senior Assistant General Counsel, LSC Office of Legal Affairs; Bertrand

Thomas, Program Counsel, LSC Office of Compliance and Enforcement; Cheryl Nolan, Program Counsel, LSC Office of Program Performance; and Mark Freedman, Assistant General Counsel, LSC Office of Legal Affairs.

The discussion at the second Workshop focused primarily on how hotlines approach the issue of providing notice to clients and applicants and how they process grievances given that in-person contact with such programs is extremely rare, and how clients and applicants experience the grievance process and what the process means for them. There was also some discussion of additional issues, such as client confidentiality and potential application of the grievance process to private attorneys providing services pursuant to a grantee's PAI program. The following issues and themes emerged from the discussion:

- The programs felt that a strength of the regulation is its flexibility. Programs have different delivery systems, even among hotlines, and different approaches. They cautioned against adopting specific practices in the regulation itself. Rather, they felt that programs should be free to adopt practices that best meet their delivery model and communities.
- Hotlines have different approaches to providing notice to callers. Some programs include it in their automated script. There is some concern about making the initial contact seem negative by bringing up the grievance process. There is also a concern about callers being denied service without knowing about their grievance rights. Many participants felt that the regulation should not require notice in the automated hotline script.
- The regulation could emphasize the importance of the notice but leave it to the programs to figure out the best way to provide it in different situations.
- Client and applicant dignity is very important. Most concerns are addressed when the applicant feels that they were heard and taken seriously, even if they are denied service.
- All of the programs reported that intake staff will deal with dissatisfied callers by offering to let them talk to a supervisor, sometimes the executive director. They are given the choice of talking to someone or filing a written complaint. They almost always want to talk to someone. Talking with someone higher up almost always resolves the issue and usually entails an explanation of the decision not to provide service.
- Decisions to deny service sometimes involve the priorities of other entities such as pro bono programs that take referrals. Some programs handle intake for themselves and for other organizations. The criteria for intake are not always the same. A program may have to handle complaints about denials of service that involve a different program's priorities.
- In many situations there is nothing more that the program can do, especially when a denial of service decision was correct. There was a concern about creating lots of procedures that would give a grievant false hope. It is important that the applicant get an ''honest no'' in a timely fashion.
- The oral and written statements to a grievance committee do not require an in person hearing. These can be conveyed by conference call, which may be better in some circumstances. In some cases though, clients or applicants have neither transportation nor access to a phone. Programs may have difficulty providing grievance procedures in those situations.
- Hotlines have a number of callers who never speak to a member of the hotline staff. They include hang ups, disconnected calls, people who got information through the automated system, and people who could not wait long enough. These calls may include frustrated applicants who never got to the denial of service stage.
- Web sites could provide client grievance information, but that also raises questions about how to make grievance information available only to people with complaints about that program. There is a danger of a generally available form becoming a conduit for a flood of complaints unrelated to a program and its services.
- The grievance process itself should not be intimidating. Often the applicants and clients are already very frustrated and upset before contacting the program.
- There was discussion of what process, if any, a client had for quality concerns with a PAI attorney or a pro bono referral. One program reported informally mediating these disputes. Another program reported surveying clients at the end of PAI cases and following up on any negative comments. One program reported that its separate pro bono program has its own grievance procedures. There was a concern that private attorneys would not volunteer if they felt that they would be subject to a program's grievance process and grievance committee. There was some discussion acknowledging a distinction between paid and unpaid PAI attorneys, but noting that clients do not see a difference.

Section-by-Section Analysis

After considering the discussions from the Workshops, LSC has determined that the regulation is generally working as intended and that some of the issues raised in the course of the Workshops, while of significant importance, are not issues which can easily be addressed by changes in the regulation itself. Accordingly, LSC is proposing only modest changes to the text of the regulation. LSC believes, however, that these changes will improve the regulation and benefit both grantees and clients and applicants for legal assistance. These changes are discussed in greater detail below.

Section 1621.1—Purpose

LSC is proposing to amend this section to clarify that the grievance procedures required by this section are intended for the use and benefit of applicants for legal assistance and for clients of recipients and not for the use or benefit of third parties. In addition, LSC proposes to delete the reference to ''an effective remedy'' because the grievance process is just that, a process and not a guarantee of any specific outcome or ''remedy'' for the complainant. LSC believes that these changes are consistent with the current application and understanding of the rule and are appropriate to more accurately reflect the purpose of the regulation.

LSC considered including a statement in this section clarifying that the client grievance procedure is not intended to and does not create any entitlement on the part of applicants to legal assistance. The reason for including such a statement would be that the vast majority of complaints received are from applicants who have been denied legal assistance and it is possible that having a clarifying statement in the regulation would help to limit such complaints. However, LSC ultimately determined that including a statement to this effect would not likely be very useful because it seems unlikely that many applicants for legal assistance will have read the regulation prior to applying for legal assistance. As such, it seems an unnecessary addition to the regulation. LSC invites comment on this issue.

Another issue which came up during the Workshops was the ancillary use by recipients of the client grievance procedure as a feedback mechanism to help recipients identify issues such as the need for priorities changes (i.e., because there are increasing numbers of applicants seeking legal assistance for problems not otherwise part of the recipient's priorities), foreign language

assistance, staff training, etc. Although LSC believes that information collected through the client grievance procedure can and should, as a best practice, be used in this manner, such ancillary use is incidental and not the purpose of the client grievance procedure per se. LSC believes that adding a reference to such ancillary use to the purpose statement of the regulation would be inappropriate and would dilute the focus of the regulation from its purpose of providing applicants and clients with an effective avenue for pursuing complaints. LSC invites comment on this issue.

Section 1621.2—Grievance Committee

LSC is not proposing any changes to this section. There was discussion in one of the Workshops about whether and to what extent it is appropriate for the composition of a grievance committee to deviate from the approximate proportions of lawyers and clients on the governing body, e.g. by a higher proportion of clients than the governing body has generally. It was not clear from the discussion, however, what such a change would accomplish and there was no clear feeling that the current requirement was resulting in ineffective or inappropriate grievance committees. Accordingly, LSC considers the current wording of the regulation, which requires the proportion of clients and lawyer members of the grievance committee to approximate that of the governing body, to be sufficiently flexible for recipients to respond to local conditions. As such, LSC believes any change to this section to be unwarranted.

Section 1621.3—Complaints by Applicants About Denial of Legal Assistance

LSC is proposing to reorganize the regulation to move the current section dealing with complaints about denial of service to applicants before the section on complaints by clients about the manner or quality of legal assistance provided. This change is being proposed for two reasons. First, the vast majority of complaints that recipients receive are from applicants who have been denied legal assistance for one reason or another. As such, it seems appropriate for this section to appear first in the regulation. Second, and more importantly, the current regulation (and the regulation as being proposed herein) requires recipients' to adopt a simpler procedure for the handling of these complaints. There was some concern that some level of confusion is created by having the more detailed procedures required by the section on complaints about the manner or quality of legal assistance appear first in the regulation. Put another way, there was concern that the current organization of the regulation obscures the fact that recipients are permitted to adopt a different procedure for processing the denial of complaints of legal assistance by applicants. Accordingly, LSC believes the proposed reorganization will clarify this matter and make the regulation easier for recipients and LSC to use.

In addition to the proposed reorganization discussed above, LSC is proposing modest substantive changes to the regulation. First, LSC is proposing to add language to the title of this section and the text of the regulation to clarify that this section refers to complaints by applicants about the denial of legal assistance. Consistent with the proposed changes in the purpose section, LSC believes these changes will help clarify that the grievance procedure is available to applicants and not to third parties wishing to complain about denial of service to applicants who are not themselves complaining. LSC notes that for applicants who are underage or mentally incompetent, the applicant him or herself is not likely to be directly applying and LSC does not intend this change to impede the ability of the person (parent, guardian or other representative) to act on that applicant's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the applicant is otherwise capable of complaining personally.

Second, LSC proposes to delete the language which limits complaints about the denial of legal assistance to situations in which the denial was related to the financial ineligibility of the applicant, the fact that legal assistance sought is prohibited by the LSC Act or regulations or lies outside the recipient's priorities. Applicants are denied for these and other reasons, such as lack of resources, application of the recipient's case acceptance guidelines, the merit of the applicant's legal claim, etc. By removing these limitations, the regulation will apply in all situations of a denial of legal assistance. From the applicant's point of view it is immaterial why the denial has occurred and LSC can discern no good reason to afford some applicants, but not others, an avenue for review of decisions to deny legal assistance. Moreover, the recipients participating in the workshops noted that they do not make any distinction between applicants on this basis and make their grievance procedure available to any applicant denied service, regardless of the reason. LSC believes that the proposed change will, therefore, not create any new burdens on recipients, yet will implement the policy in a more appropriate manner.

Third, LSC proposes to clarify that the phrase ''adequate notice'' as it is used in this section is adequate notice of the complaint procedures. The current regulation is vague on this point, although in context the logical inference is that it must refer to notice of what the complaint procedures are. LSC believes clarifying the language on this point would be useful. LSC is further proposing to add the words ''as practicable'' after ''adequate notice.'' LSC believes that this change will help recipients who do not have in-person contact with many applicants and who, therefore, cannot rely on posted notice of the complaint procedures in the office. Such recipients use a variety of methods of providing notice, from posting on websites, to inclusion of notice in phone menus, to having intake workers and attorneys speaking with applicants provide the information orally. All of these methods can be sufficient and appropriate to local circumstances. The proposed phrasing is intended to ensure that recipients have sufficient flexibility to determine exactly how and when notice of the complaint procedures are provided to applicants, while retaining the requirement that the notice be ''adequate'' to achieve the purpose that applicants know their rights in a timely and substantively meaningful way so as to exercise them if desired.

Finally, LSC is proposing to add a statement that the required procedure must be designed to foster effective communications between recipients and complaining applicants. It was clear in the Workshops that this is very important to both applicants and recipients. Indeed, it is one of the main reasons for having a complaint procedure. Accordingly, LSC believes it is important for the regulation to reflect this. Because LSC is confident that the vast majority of recipient grievance procedures are already designed to foster effective communications, the proposed addition to the regulation should not create any undue burden on recipients. LSC considered also proposing to add a statement that the required procedure must be designed to treat complaining applicants with dignity, as this was another recurring refrain LSC heard throughout the Workshops. Ultimately, however, LSC believes that treating applicants with dignity is such a basic duty, it is neither

necessary nor appropriate to make it a specific regulatory requirement in this context. LSC invites comment on this issue.

LSC intends that existing complaint procedures for applicants who are denied legal assistance which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section.

Section 1621.4—Complaints by Clients About Manner or Quality of Legal Assistance

As noted above, LSC is proposing to reorganize the regulation to move the current section dealing with complaints about legal assistance provided to clients after the section on complaints by applicants about denial of legal assistance. For a discussion of the reasons for this proposed change, see the discussion at section 1621.3, above.

LSC is also proposing some minor substantive changes. First, LSC is proposing to add language to the title of this section and the text of the regulation to clarify that this section refers to complaints by clients about the manner or quality of legal assistance provided. Consistent with the proposed changes in the purpose section, LSC believes these changes will help clarify that the grievance procedure is available to clients and not to third parties wishing to complain about the legal assistance provided to clients who are not themselves complaining. As with the similar proposed changes to the section of applicants, LSC notes that for clients who are underage or mentally incompetent, the client him or herself is not likely to be directly applying and LSC does not intend this change to impede the ability of the person (parent, guardian or other representative) to act on that client's behalf. Rather, LSC intends the proposed clarification to apply to situations in which a neighbor, friend, relative or other third party would seek to complain in a situation in which the client is otherwise capable of complaining personally.

LSC is also proposing some revision of the language setting forth the minimum requirements for the required grievance procedures. Except as noted below, these changes are not intended to create any substantive change to the regulation, but, rather, to provide more structural clarity to the regulation. The changes being proposed do contain a few substantive changes. One such proposed change is the addition of a statement that the procedures be designed to foster effective communications between recipients and complaining clients. The rationale for this proposed change is the same as for the parallel proposed change in proposed section 1621.3, above. As with proposed section 1621.3, LSC considered also proposing to add a statement that the required procedure must be designed to treat complaining clients with dignity, but chose not to for the same reasons articulated in that proposed section, above.

LSC is also proposing to amend the time specified in the rule regarding when the client must be informed of the complaint procedures available to clients. Currently, clients must be informed ''at the time of the initial visit.'' This is typically accomplished in a few different ways, such as through the posting of the complaint procedures in the office, by providing an information sheet to clients or by including information about the grievance procedure in the retainer agreement, etc. However, the phrase ''at the time of the initial visit'' tends to imply an in-person initial contact—a situation which in increasingly uncommon for many recipients and clients. Also, a client may not actually be accepted as a client at the time of the initial contact (whether in person or not). LSC believes that what is important is that when the person being accepted as client be informed of the available complaint procedure at that time because that is when the information appears to be most useful and meaningful for the client. Accordingly, LSC is proposing the clients be informed of the grievance procedures available to them to complain about the manner or quality of the legal assistance they receive ''at the time the person is accepted as a client or as soon thereafter as practicable.'' LSC is not proposing to dictate how that notice must be provided. LSC believes that this change will assist recipients and clients in situations in which the client does not have an in-person initial visit and will afford recipients the flexibility to provide notice in a manner and time appropriate to local conditions.

LSC intends that a recipient's existing complaint procedures for clients who are dissatisfied with the manner or quality of legal assistance provided which would meet the proposed revised requirements may continue to be used and would be considered to be sufficient to meet their obligations under this section.

The last change LSC is proposing to this section is to include an explicit requirement that the grievance procedures provide some method of reviewing complaints by clients about the manner or quality of service provided by private attorneys pursuant to the recipient's private attorney involvement (PAI) program under 45 CFR part 1614. The regulation has previously been silent on this matter and LSC has not required recipients to apply the client grievance procedure to private attorneys. LSC notes, however, that from the clients' standpoint it is immaterial whether legal assistance happens to be provided directly by the recipient or by a private attorney pursuant to the PAI program. In both cases, the client remains a client of the recipient and should be afforded some avenue to complain about legal assistance provided. At the same time, subjecting private attorneys to the same grievance procedure that applies to the recipient would likely be administratively burdensome and likely impede recipients' ability to recruit private attorneys for the PAI program. In addition, some PAI programs, such as ones administered by bar associations, already have their own complaint procedures. Also, recipients are required by the section 1614.3(d)(3) of the PAI regulation to provide effective oversight of their private attorneys. Providing some process for review of complaints about their service is reasonably considered part of that responsibility. In light of the above, LSC believes that it is appropriate that this regulation contain a requirement that recipients establish a procedure to review complaints by clients about the manner or quality of service of PAI attorneys. LSC is not proposing to require that recipients afford the same procedure as provided to clients being provided service directly by the recipient. Moreover, LSC intends that existing formal and informal methods for review of complaints about PAI attorneys currently meeting recipients' obligations under part 1614 continue to be used and would be considered to be sufficient to meet their obligations under this section.

List of Subjects in 45 CFR Part 1621

Grant programs—law, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to revise 45 CFR part 1621 as follows:

PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.

1621.1 Purpose.
1621.2 Grievance Committee.
1621.3 Complaints by applicants about denial of legal assistance.
1621.4 Complaints by clients about manner or quality of legal assistance.

Authority: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

§ 1621.1 Purpose.

The part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints by applicants about denial of legal assistance.

A recipient shall establish a simple procedure for review of decisions to deny legal assistance to applicants. The procedure shall, at a minimum, provide: A method for the recipient to provide applicants with adequate notice as practicable of the complaint procedures; information about how to make a complaint; and an opportunity for applicants to confer with Executive Director or the Executive Director's designee, and, to the extent practicable, with a representative of the governing body. The procedure must be designed to foster effective communications between the recipient and complaining applicants.

§ 1621.4 Complaints by clients about manner or quality of legal assistance.

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as practicable, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director of the recipient, or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral and written statement to a grievance committee established by the governing body as required by section 1621.2 of this part. The procedures shall also: Provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative, permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Consistent with its responsibilities under 45 CFR 1614.3(d)(3), a recipient shall establish a procedure to review complaints by clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR part 1614.

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

Dated: August 14, 2006.

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. E6–13700 Filed 8–18–06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 6, 7, 9, 13, 20, 22, 24, 27, 68, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[WT Docket No. 06–150, CC Docket No. 94–102, WT Docket No. 01–309; FCC 06–114]

Service Rules for the 698–746, 747–762 and 777–792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) undertakes an examination of possible changes to service rules that primarily govern wireless licenses in the 698–746, 747–762, and 777–792 MHz bands (700 MHz Band) currently occupied by television (TV) broadcasters and being made available for new services as a result of the digital television (DTV) transition. Because of statutory changes, industry developments, and the fact more than four years have passed since the Commission adopted its initial band plans and service rules governing these licenses, the Commission is revisiting various of its earlier rule decisions regarding these 700 MHz Band licenses. The Commission also is requesting comment on: the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to Miscellaneous Wireless Communications Services rules including the Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1), should be subject to 911 and enhanced 911 (911/E911) and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands; and how to modify Commission rules to ensure that they include all similar wireless services.

DATES: Comments due on or before September 20, 2006. Reply comments are due on or before October 20, 2006.

ADDRESSES: You may submit comments, identified by WT Docket No. 06–150, CC Docket No. 94–102, WT Docket No. 01–309, 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: 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.
- *Mail:* Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- *Accessible Formats:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC, 20554; and Bill Stafford, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6221, Washington, DC, 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309 released August 10, 2006. The complete text of the *NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number, FCC 06–114. The *NPRM* is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS): *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.*

Initial Paperwork Reduction Act of 1995 Analysis: This document 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 on or before September 20, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 (see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission notes, however, that section 213 of the Consolidated Appropriations Act 2000, Public Law 106–113, provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act. The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

I. Introduction

1. In this *NPRM,* the Commission seeks comment on possible changes to the part 27 service rules governing wireless licenses in the 700 MHz Band currently occupied by TV broadcasters and being made available for new services as a result of the DTV transition. More than four years have passed since the Commission adopted its initial band plans and service rules governing these licenses. During that time, Congress enacted significant statutory changes to the DTV transition in the Digital Television and Public Safety Act of 2005 (DTV Act). The DTV Act could affect the Commission's existing regulatory approach to the 698–806 MHz Band, which had envisioned ''early'' recovery of TV Channels 60–69 (Upper 700 MHz Band), but had anticipated recovery of TV Channels 52–59 (Lower 700 MHz Band) after the DTV transition was complete. In addition, during the past four years, U.S. consumers have been introduced to a variety of innovative wireless services and technologies at the same time that the number of subscribers for mobile telephone services has increased by approximately 50 percent. The Commission therefore is revisiting various of its earlier decisions regarding these 700 MHz Band licenses.

2. This *NPRM* addresses many of the rules applicable to certain spectrum in the Upper 700 MHz Band (Television Channels 60–69 in the 746–806 MHz band) and the Lower 700 MHz Band (TV Channels 52–59 in the 698–746 MHz band). This includes licenses yet to be auctioned in 30 megahertz of spectrum in the Upper 700 MHz Band and in 30 megahertz of spectrum in the Lower 700 MHz Band, as well as licenses that already have been auctioned in 18 megahertz in the Lower 700 MHz Band. Rules applicable to spectrum currently occupied by TV Channels 63–64 (764–776 MHz band) and 68–69 (794–806 MHz band) are not considered in this *NPRM* because that spectrum has been allocated to public safety (and thus is not included within the term of the 700 MHz Band as defined in this *NPRM*). Also, the rules applicable to the Guard Band spectrum at 746–747/776–777 MHz and 762–764/792–794 MHz (which also are not included within the definition of the 700 MHz Band) are not considered in this *NPRM* except insofar as it is a part 27 service to which 911 and enhanced 911 and hearing aid compatibility rules may potentially be applied. Finally, in this *NPRM* the Commission does not seek comment on the allocation or service rules for broadcasting or other legacy operations in these bands.

II. Discussion

3. Given that seven years have passed since the Commission first initiated a proceeding on the 700 MHz Band, the Commission seeks to evaluate whether changes to the existing service rules pertaining to 700 MHz Band licenses—including 48 megahertz of Lower 700 MHz Band spectrum (Blocks A–E), and the 30 megahertz of Upper 700 MHz Band spectrum (Blocks C and D)—may ultimately permit more effective use of this spectrum to better meet the needs of today's consumers.

A. Size of Service Areas

1. Need for Additional Access to Spectrum Licensed Over Small Service Areas

4. The Commission seeks comment on whether, in order to further enhance access to spectrum in rural areas, the service areas sizes of the licenses to be auctioned should be smaller than the EAGs provided for under existing rules. The Commission seeks comment on the extent to which the assignment of spectrum over smaller service areas could lead to increased and better service in these areas. In addition, parties should comment on possible transaction costs associated with the assignment of additional spectrum over small service areas on those service providers with business plans to provide service to rural areas as part of regional or national footprints. The Commission seeks comment on the

factors that the Commission should use in balancing the needs of small and rural carriers as well as large and national carriers as they seek to provide service to their rural customers.

5. When addressing whether to license additional 700 MHz Band spectrum over small service areas, commenting parties should address the relationship between their ability to obtain licenses at auction and their ultimate deployment of service in rural areas. For example, the Commission seeks comment on whether certain areas may continue to have high costs of providing service that are unrelated to spectrum acquisition costs. The Commission seeks comment on whether certain areas may continue to have high costs of providing service that are unrelated to spectrum acquisition costs and whether or not there is a point at which the advantages of assigning additional small-area licenses diminish relative to the disadvantages.

6. In assessing any particular need and/or amount of spectrum, commenters should consider the 700 MHz Band's potential suitability for more rapid deployment of mobile and other advanced services in high-cost areas given its propagation and other technical characteristics. The Commission seeks comment on whether the benefits due to the propagation characteristics of this spectrum make it appropriate to assign an additional amount of 700 MHz Band spectrum over small areas, or whether other considerations support licensing the bands over EAGs or other large areas.

7. As compared to other bands, the Commission seeks comment on the potential of 700 MHz Band spectrum to support broadband and other new applications. Commenters should explain how much additional 700 MHz Band spectrum licensed over areas other than EAGs may be necessary to support spectrum-based broadband applications in rural areas.

8. The Commission seeks comment on the need for greater access to 700 MHz Band spectrum on a smaller-area basis. In 2005, the Commission increased the amount of AWS spectrum to be assigned over CMAs due to market developments and the support of several commenters, including parties representing small and larger carriers. Commenters should also consider the Commission's decision to assign 12 megahertz of 700 MHz Band spectrum over CMAs. To the extent the Commission decides not to assign additional 700 MHz spectrum over small areas, the Commission seeks comment on whether at some point in the future (*e.g.*, five years, ten years, twenty years) consumer demand and spectrum-intensive applications and technologies could exhaust the capacity of spectrum in rural areas that is currently assigned over CMAs.

2. Optimal Service Area Size(s) for Remaining Licenses

9. In the event the Commission decides that there is a need for license sizes other than EAGs for the 700 MHz Band licenses that have yet to be auctioned, the Commission must determine the appropriate initial service area size, or combination of sizes, for those licenses. For instance, the Commission could modify the current service area designations for the 700 MHz Band to include one or more license sizes other than EAGs, or a combination thereof, or keep in place the service areas currently reflected in its rules. The Commission therefore seeks comment on the license size or combination of license sizes that should be provided.

10. First, the Commission seeks general comment on the costs associated with the initial service area sizes the Commission adopts in the 700 MHz Band. The Commission recognizes that consumer needs and geographic coverage will change over time, and the Commission anticipates that there will be a need for providers to aggregate or disaggregate spectrum holdings as they address these evolving needs and market demands. Accordingly, the Commission seeks comment on the transaction costs associated with pre- and post-auction aggregation and disaggregation. Both large nationwide providers as well as small regional and rural providers may be able to make use of this spectrum, yet the optimal size of geographic service area is different for these two types of providers, and licenses for areas that are larger or smaller than desired will impose transaction costs on those parties that wish to acquire them. Thus, the Commission considers the degree and likelihood of such costs as 700 MHz Band spectrum is licensed in the future, and the extent to which the transaction costs of aggregating, disaggregating, or partitioning spectrum are a significant concern for those parties that most highly value this spectrum. Parties should also address any costs resulting from the unwillingness to divide spectrum and service areas due to a lack of license marketability or other financial considerations.

11. In addition to seeking comment on the continued use of the EAGs in the band, which consist of six geographic service areas, the Commission seeks comment on whether to license the unauctioned spectrum, for example, by using the twelve Regional Economic Area Groupings (REAGs), the 52 Major Economic Areas (MEAs), or some other large regional licensing area. To the extent the Commission adopts large geographic service areas for the 700 MHz Band other than EAGs, the Commission seeks comment on whether REAGs may have advantages over EAGs. On the other hand, the Commission requests comment on whether substituting REAGs for EAGs may have disadvantages.

12. If the Commission determines that smaller areas should be provided, it could license the spectrum or some part thereof on the basis of local areas, such as Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs), or EAs. The Commission seeks comment on the use of smaller, local license areas based on these, or some other small area sizes. In particular, the Commission asks that commenters address the request by Rural Cellular Association (RCA), as supported by other parties, that the Commission assign additional CMA-sized licenses in the 700 MHz Band. Finally, the Commission seeks comment on whether a combination of different license sizes should be adopted and, if so, what combination should be reflected in its rules for the spectrum.

13. Notwithstanding the flexibility of use that permits 700 MHz Band spectrum to be used for any service consistent with the band's allocation, commenting parties should describe any anticipated 700 MHz Band service offerings that demonstrate a need for greater access to this spectrum on a specific geographic basis. Commenters should explain how certain service area sizes correspond to the business plans of potential licensees and thus avoid the transaction costs that could be associated with aggregation, disaggregation, or partitioning. Commenters should also identify the service area sizes that best suit the anticipated uses for 700 MHz Band spectrum. The Commission could assign all remaining spectrum in the 700 MHz Band using a combination of larger and smaller areas. Alternatively, it could employ medium-sized license areas (*e.g.*, MEAs). In such a case, commenters should consider whether the use of medium-sized initial service areas would be less efficient than a combination of differently sized service areas, given that transaction costs would be potentially incurred by auction winners of both small and large service areas that may have to aggregate, partition, or disaggregate spectrum in order to meet their particular spectrum needs.

14. The Commission seeks comment on the type of services that commenters believe will be accommodated in the service areas they favor, the economic advantages of adopting their favored approach, and what sized service area would be most advantageous for the particular service. The Commission also seeks comment on whether changes related to developments in technology should affect the appropriate size of initial service areas. If there are different types of new technologies and services being created for these markets, commenters should address whether such developments support a certain service area size for portions of the 700 MHz Band.

15. In addressing the appropriate size(s) of service areas for 700 MHz Band licenses, the Commission seeks comment on any impact of using smaller service areas that cannot be used as building blocks to create larger service areas should the Commission adopt a combination of license area sizes for the unauctioned spectrum in the 700 MHz Band. Specifically, under a combination approach, the Commission seeks comment on whether it would be preferable to assign licenses over large and small areas that are based on the same geographic unit (*e.g.*, MEAs and EAs).

16. In the 700 MHz Band, the Gulf of Mexico was divided between two EAGs for EAG licensing, whereas it was designated as a separate area for CMA licensing. In the event that the Commission decides to revise its prior determinations regarding license sizes in the 700 MHz Band, the Commission seek comment on including the Gulf of Mexico as part of larger service areas, or whether the Commission should separately license one or more service areas to cover the Gulf of Mexico.

3. Spectrum Block(s) Suitable for Potential Reassignment

17. In the event that the Commission decides to provide for service area sizes other than EAGs in future 700 MHz Band auctions, the Commission seeks comment on which of the spectrum block(s) in the band that have not been auctioned should be re-designated to a different service area size or sizes. The Commission seeks comment, for example, on the Rural Telecommunications Group's (RTG) suggestion that the Commission provide CMA licensing in the Lower 700 MHz Band's Block B and in the Upper 700 MHz Band's Block C.

18. With respect to the blocks in the Upper 700 MHz Band, the Commission seeks comment on the use of CMA or other small service area licenses, and which spectrum block or blocks in that band, if any, should be licensed on that basis. The Commission asks commenters to consider the presence of public safety systems, which, under Commission rules, receive special protection against harmful interference. For example, equipment operating in the Upper 700 MHz Band Blocks C and D must meet strict out-of-band emission (OOBE) limits to protect public safety operations. Due to the relatively small spectral separation between these blocks and the public safety spectrum, such equipment may have to employ enhanced filtering, which would likely add to the cost of base and mobile equipment. On the other hand, there may be certain spectrum blocks within the Upper 700 MHz Band that, because they are farther removed from the public safety spectrum, will require less costly equipment than equipment operating in spectrum blocks closer to the public safety bands. Thus, the Commission seeks comment on the impact of equipment costs in general if the Commission decides to revise the size of service area for Upper 700 MHz Band spectrum. The Commission seeks comment on which spectrum blocks in the current Upper 700 MHz band plan (*i.e.*, Blocks C or D), or in any revised band plan, would incur the greatest and least equipment costs and the extent to which such additional costs could affect the provision of service.

19. Given these possible considerations relating to equipment costs, the Commission also seeks comment on whether any new CMA or other small service area licenses should be located in the Lower 700 MHz Band, rather than the Upper 700 MHz Band, if the Commission decides to revise existing band plans to provide for small area licenses. In the event that additional equipment cost issues might make it preferable to locate new small-area licenses in the Lower 700 MHz Band, the Commission seeks comment on whether its 6 megahertz spectrum blocks would efficiently facilitate the implementation of 1xEV–DO and Wideband Code Division Multiple Access (CDMA) technologies—the third-generation (3G) technologies of CDMA and GSM networks—in the Lower 700 MHz Band. The Commission also seeks comment on whether 802.16 (WiMax), a possible alternative to 1xEV–DO and Wideband CDMA technologies, would support a variety of bandwidths, including 6 megahertz, and whether WiMax potentially could be readily accommodated on Lower 700 MHz Band spectrum blocks. In addition, the Commission seeks comment on the ability of 6 megahertz segments to accommodate high-speed data systems similar to the MediaFLO multi-media system being implemented by Qualcomm Inc. (Qualcomm) on Block D in the Lower 700 MHz Band.

20. In the event the Commission decides to locate additional CMA or other small service area licenses in the Lower 700 MHz Band, the Commission seeks comment on which spectrum blocks in that band should be licensed on that basis. The Commission asks that comments address whether any particular spectrum blocks in the Lower 700 MHz Band (*i.e.*, Blocks A, B, and/or E) would be better suited for small-area licensing than other blocks, and to state the reasons for supporting the use of any one or more of these spectrum blocks for this purpose.

21. Specifically, the Commission seeks comment on the impact of designating the unpaired 6 megahertz Block E in the Lower 700 MHz Band for small-area licensing. If 6 megahertz is sufficient to meet small and/or rural carriers' spectrum needs, commenters should address whether there are broadband technologies that can operate on unpaired spectrum such that the 6 megahertz of spectrum in Block E would be suitable for potential reassignment. On the other hand, the Commission seeks comment on what spectrum in the Lower 700 MHz Band should be licensed over CMAs or other small service areas if additional paired spectrum is determined to be necessary and/or appropriate for small service areas.

22. The Commission notes that if it locates a CMA-based license adjacent to an EAG (or other differently sized area) in the Lower or Upper 700 MHz Band, there may be an impact on aggregation, including on the level of transaction costs. Thus, the Commission seeks comment on whether aggregation may be more difficult and complicated to accomplish if spectrum blocks of differing geographic sizes are located adjacent to one another, and what effect those factors should have on its consideration of the current band plan.

23. The Commission also seeks comment on whether, and to what extent, there would be an impact on the need to provide protection to TV Channel 51 if the Commission were to provide for licensing areas that are smaller than EAGs in the adjacent Lower 700 MHz Band Block A.

B. Size of Spectrum Blocks

24. To the extent the Commission decides to auction and assign additional licenses over service area sizes other than the six EAGs, the Commission also

seeks comment on whether the Commission could better accommodate such assignments by reconfiguring or sub-dividing existing spectrum blocks in the band plans in the 700 MHz Band. The Commission seeks comment generally on whether the Commission should reconfigure the license blocks in the Upper 700 MHz Band, the Lower 700 MHz Band, or both. Although the Commission believes the Commission should retain the current band plan in the Lower 700 MHz Band, the Commission nevertheless seeks comment on potential changes to the size of the spectrum blocks in the Lower 700 MHz Band. The Commission also discusses the possibility of revising the size and pairing of licensed spectrum blocks in the Upper 700 MHz Band. In particular, the Commission seeks comment on dividing the 20-megahertz Block D license in the Upper 700 MHz Band into two or more license blocks. In addition, the Commission seeks comment on whether and how to make more licenses available to be potentially assigned on a geographic basis or bases smaller than EAGs, and on ways to provide licenses that may better reflect recent developments. Although the Commission seeks comment on this issue primarily with respect to unauctioned licenses, there are certain issues which the Commission seeks comment on that relate to already auctioned spectrum, *i.e.*, whether to change the size and location of the spectrum blocks in the Lower 700 MHz Band, and the use of a ''two-sided auction.''

25. The Commission seeks comment on whether the spectrum blocks in the Lower 700 MHz Band should be maintained at their current 6 megahertz alignment and sizes. The spectrum comprising Lower 700 MHz Band Blocks C and D, consisting of 18 of the 48 megahertz in the Lower 700 MHz Band, has already been auctioned, and the Commission believes that the location of these auctioned blocks limits its ability to reconfigure the remaining spectrum blocks in the Lower 700 MHz Band. The Commission is seeking comment in this *NPRM* on the use of 5 megahertz blocks in the Upper 700 MHz Band. However, the use of 5 megahertz blocks in the Lower 700 MHz Band appears to be problematic. For example, considering only the 12 megahertz of spectrum located at 698–710 MHz (*i.e.*, Blocks A and B), if the Commission were to place two 5 megahertz blocks in this band, this would leave two megahertz of spectrum in the band that would have to be separately assigned. Also, because the 698–710 MHz band is paired with the 728–740 MHz band, this circumstance would apply to the 728–740 MHz band as well. The Commission nevertheless seeks comment on whether the Commission should make any changes to the size and location of spectrum blocks in the Lower 700 MHz Band and, if so, what those changes should be.

26. With respect to the Upper 700 MHz Band, the Commission seeks comment on U.S. Cellular Corporation's (USCC) proposal to divide the current 20 megahertz Block D into two separate 10 megahertz blocks. USCC proposes that one of the new 10 megahertz blocks be assigned over EAs, and the other new 10 megahertz block be assigned over EAGs. The Commission seeks comment on possibly increasing the overall number of licenses available in any given geographic area by dividing Upper 700 MHz Band Block D into two or more smaller-sized blocks, and thus provide one or more additional licenses.

27. The Commission seeks comment on whether the provision of an additional 10 megahertz paired block in the Upper 700 MHz Band (by dividing the current Block D into two such blocks) would facilitate the implementation of a wider variety of technologies in the band. A 10 megahertz paired block can readily accommodate Wideband CDMA and 1xEV–DO technologies, and dividing Block D into two such blocks would, therefore, provide an additional license that could employ one of these technologies. In addition, commenters should address whether 5 megahertz segments accommodate other systems that have recently been developed.

28. The Commission also seeks comment on whether to divide the current 20 megahertz paired Block D into more than two smaller paired blocks to better accommodate other new technologies. For example, systems based on 802.16 standards (WiMax) could potentially operate on a variety of bandwidths ranging from 1.25 to 20 megahertz, including a number of bandwidths that are 5 megahertz or smaller. Accordingly, the Commission seeks comment on whether a division of the 10 megahertz segments of paired Block D to create two or more smaller blocks—*e.g.*, 1.25, 1.75, and 7 megahertz blocks—might better accommodate this technology. The Commission also seeks comment on other possible block sizes—either larger or smaller than the current blocks sizes—that might be supported by other existing or potential technologies.

29. On the other hand, the Commission seeks comment on any disadvantages that may result from sub-dividing Upper 700 MHz Band Block D into two or more blocks. Comments should address whether the two licenses in the Upper 700 MHz Band (along with the five total licenses in the Lower 700 MHz Band) are sufficient to help enhance competition among a wide variety of providers and applicants. The Commission asks that comments consider whether a 20 megahertz paired block licensed on, *e.g.*, CMAs, in the Upper 700 MHz Band would help enhance competition among a wider variety of providers and applicants.

30. The Commission also seeks comment on whether it should sub-divide Block D into two 10 megahertz paired blocks given that, in doing so, the overall spectrum efficiency of the band may be decreased. The Commission seeks comment as well on whether, if it sub-divides Block D into two blocks, it should necessarily divide the block into two equal-sized 10 megahertz block pairs. WiMax, for example, may be able to be accommodated on 5 megahertz blocks, but the WiMax Forum has certified the use of 3.5, 7, and 10 megahertz bandwidths for 802.16-based equipment. The Commission also seeks comment on the effect of changing the block sizes on the overall spectrum efficiency of the band based on other existing or potential technologies.

31. Finally, the Commission asks that commenters addressing proposals to reconfigure existing spectrum blocks in the 700 MHz Band also address existing and/or potential opportunities to aggregate new licenses and existing licenses. The Commission seeks comment on whether, for 700 MHz Band licenses, any changes to Commission competitive bidding rules are necessary or desirable in order to facilitate the efficient aggregation of new licenses, in light of the existing spectrum blocks for 700 MHz Band licenses and any spectrum blocks that may be proposed.

32. The Commission further notes that, following an auction, parties that wish to do so may aggregate spectrum covered by new 700 MHz Band licenses with spectrum covered by existing 700 MHz Band licenses available in the secondary market. The Commission seeks comment on whether any Commission action is necessary or desirable to facilitate the aggregation of new and existing 700 MHz Band licenses in the secondary market, in light of the existing and/or proposed 700 MHz Band spectrum blocks. If so, the Commission asks that commenters address whether any such steps require changes to existing Commission competitive bidding or secondary market rules.

33. Alternatively, the Commission could facilitate such aggregation of spectrum by enabling an auction in which licenses for currently unassigned spectrum as well as licenses for spectrum previously assigned in the 700 MHz Band could be offered for sale in a single auction, a mechanism sometimes referred to as a ''two-sided auction.'' Such a ''two-sided auction'' could be implemented in several ways. As one example, the Commission might allow incumbent licensees to return their licenses to the Commission in exchange for a credit, which could be based on the prices of licenses for spectrum formerly associated with the returned licenses as determined in an auction. Alternatively, the Commission might allow existing licensees to offer their licenses in the auction, but relinquish the licenses in exchange for a credit only if prices (and related credit values) reached a certain level. A variation on this approach would be to allow incumbents to include their licenses in the auction inventory but ''pay themselves'' the winning bid if they chose to outbid other participants. In any of these alternatives, the Commission could provide that credits received in exchange for returned spectrum licenses would be transferable, and that bidders could use the credits to obtain other spectrum licenses in the same auction or another auction of spectrum licenses for the same or a different service. Consequently, incumbent licensees could exchange their current licenses for other spectrum licenses using credits, or transfer the credits to other bidders wishing to obtain licenses.

34. Commenters addressing actions the Commission might take to create a two-sided auction should address details of how the existing licenses could be incorporated into the auction, how the incumbent licensees could be compensated for ''selling'' a license, and whether any particular aspects of such an auction, either discussed in the *NPRM* or proposed by commenters, might exceed the Commission's competitive bidding authority, under either the Commission's current rules or the Communications Act. In particular, commenters should consider whether the use of credits, or other means of compensating incumbents for their licenses, may require additional authority or the adoption of new Commission rules or procedures. Among other things, commenters should consider whether there are particular design elements of a two-sided auction that would help such a mechanism work more efficiently. Commenters also should address the extent to which a two-sided auction, by offering all available (Commission-held and previously assigned) spectrum simultaneously, may provide an alternative with lower transaction costs as compared to the secondary market and whether such an alternative is needed. In addition, the Commission seeks comment on whether the use of a two-sided auction could or would promote opportunities for interested parties to better meet their needs for particular amounts of spectrum in this band. The Commission asks whether an ability to acquire more spectrum or aggregate it differently would help promote service, especially in rural areas. Finally, commenters should address any issues or other matters which may relate to competitive bidding as a result of conducting a two-sided auction in the 700 MHz Band.

C. Facilitating Access to Spectrum and Provision of Service to Consumers

35. First, the Commission considers the possibility of modifying performance requirements for unauctioned licenses to the extent they could better promote both spectrum access and service provision. Second, for all 700 MHz Band licensees, the Commission seeks comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including those specifically seeking to deliver service to rural areas. Finally, the Commission seeks comment on policies the Commission could implement to promote service on tribal lands.

1. Performance Requirements

36. The Commission seeks comment on whether it needs to revise the existing ''substantial service'' performance requirement, or possibly adopt alternative build-out rules, for unauctioned licenses in the 700 MHz Band in order to further access to spectrum and provision of service to consumers, including those in rural areas. To the extent commenters believe the current requirement, or its safe harbors, should be revised, the Commission seeks comment on whether other approaches may offer certain additional benefits that outweigh possible additional costs. These options could involve adopting rules that require specific actions by licensees in order to retain their licenses.

37. The current performance requirement for the 700 MHz Band is based on the ''substantial service'' standard defined in 47 CFR 27.14(a). The Commission seeks comment as to the effectiveness of this approach in promoting service in the unauctioned portions of the 700 MHz Band, especially in rural areas. Under this standard, the Commission established ''safe harbors'' to provide examples of what would be considered substantial service in the 700 MHz Band. The Commission seeks comment on whether any changes to these safe harbors are warranted to better promote service to all areas. To the extent commenters address whether 47 CFR 27.14(a) or its safe harbors should be revised, they should also consider whether any other provisions in the existing part 27 rules require specific recognition or adjustment to comport with the potential application of those performance requirements for 700 MHz Band licensees. For example, the Commission seeks comment on whether it needs to clarify the extent to which certain of the Commission's non-part 27 rule parts, as listed in 47 CFR 27.3, apply to 700 MHz Band licensees with regard to performance requirements relating to build-out and/or provision of service. In addition, the Commission notes that 47 CFR 27.15 describes inter alia elections for geographic partitioning and spectrum disaggregation to ensure the Commission's performance requirements are met when licenses are divided spectrally or geographically between two or more parties. The Commission seeks comment on whether to change any aspect of 47 CFR 27.15 in order to help ensure the provision of service to consumers, including any rural areas that are part of a partitioned or disaggregated license.

38. The Commission also seeks comment on whether it should further define safe harbors for licensees seeking to meet the part 27 ''substantial service'' standard on 700 MHz Band spectrum. The Commission notes, for example, that the Commission's safe harbors for 700 MHz Band licensees did not specifically mandate that a particular level of service be provided in rural areas. Rather, the Commission cites past statements that a licensee that limits buildout to urban and high density areas will not necessarily be ensured of license renewal even if it meets the construction benchmarks, as well as past statements that it believed substantial service requires the licensee to buildout in rural areas as well. The Commission cites past guidance on rural construction which established a safe harbor for providing mobile service to rural areas. In particular, the Commission cites statements that a mobile wireless service licensee in various bands, including the 700 MHz Band, can provide substantial service by

serving at least 75 percent of the geographic area of at least 20 percent of the 'rural areas' within its licensed area. The Commission seeks comment on whether this ''rural safe harbor'' for mobile wireless services should continue to apply to the 700 MHz Band licenses that have not been auctioned, or whether it should be revised. The Commission also seeks comment as to whether to apply a safe harbor to other types of services (*e.g.*, fixed) in the 700 MHz Band and, if so, what other services should be included and how the safe harbor should be defined. In addition, the Commission asks how ''coverage'' would be measured for these other services so as to improve incentives to serve rural areas. Finally, the Commission seeks comment on whether there are other safe harbors pertaining to construction in rural areas that should fulfill the substantial service requirement and that would provide additional regulatory certainty regarding the Commission's performance requirements.

39. As an alternative to maintaining the substantial service standard that the Commission previously determined should apply to the 700 MHz Band, the Commission seeks comment on whether it should apply more specific construction benchmarks to the unauctioned licenses in the 700 MHz Band. In the past, such construction benchmarks have required a licensee to make service available to a certain percentage of the population or geographic area.

40. The Commission seeks comment on whether it should adopt a population-based construction requirement as part of any possible revisions to the licensing rules in some or all of the spectrum bands to be auctioned in the 700 MHz Band. If such a benchmark were adopted, the Commission seeks comment on the precise population benchmark that should be adopted, and whether it should be more extensive than the previous Personal Communications Service (PCS) rules, such as requiring coverage sufficient to provide service to one-half of the population of the license area within five years and three-fourths within ten years.

41. As another option, the Commission seeks comment on whether a benchmark based on geography for 700 MHz Band unauctioned licenses would be more effective in promoting service to underserved areas without offsetting disadvantages. In this *NPRM*, the Commission seeks comment on whether geographic-based benchmarks warrant further consideration and, in particular, whether these rules could be designed to promote build-out in rural portions of these licenses yet to be auctioned. If so, the Commission seeks comment on how such a geography-based benchmark could or should be structured. The Commission also seeks comment on any other geographic benchmarks that would be appropriate for these licenses. For any proposed benchmark, the Commission asks commenters to describe how the Commission should apply it to the variety of fixed, mobile, broadcast, and private services that are authorized in this spectrum.

42. The Commission also seeks comment on whether it should consider adopting a ''keep what you use'' re-licensing mechanism for the unauctioned spectrum in the 700 MHz Band, similar to the approach adopted for Cellular Radiotelephone Service (cellular) service in the 1980s. Under a ''keep what you use'' rule, the Commission would reclaim any ''unused'' spectrum in a license area after a pre-defined period of time. The Commission also seeks comment on whether it should consider a modified version of this rule, such as a ''triggered keep what you use'' rule, in which the Commission, rather than reclaiming ''unused'' spectrum after a period of time, would reclaim spectrum only in the event a party other than the licensee (*e.g.*, a spectrum lessee) seeks access to the licensed spectrum in an unserved portion of the license area. Similarly, the Commission seeks comment on whether the Commission should consider applying either the ''keep what you use'' rule or ''triggered keep what you use'' rule only to a portion of the spectrum (*e.g.*, one-half) of the spectrum that otherwise would be reclaimed, or eligible for reclamation, by the Commission.

43. Given that these variations of the ''keep what you use'' approach may make unused spectrum available to other parties interested in gaining access to spectrum, the Commission seeks comment on whether it may be an effective means to provide additional service, including in rural areas. To the extent that licensees may be less likely to use the spectrum in rural portions of their license areas, the Commission also seeks comment as to whether the Commission should apply this approach only to licenses covering rural areas, or only to that portion of licenses that covers rural areas.

44. To the extent commenters believe a ''keep what you use'' mechanism is appropriate, the Commission seeks comment on how ''use'' could or should be defined, given the goals the Commission seeks to further. In particular, the Commission seeks comment on how it should define what type of activities demonstrate that the spectrum is being ''used'' in this context, considering that the part 27 rules facilitate a wide variety of services and uses in this band.

2. Facilitating Access to Spectrum in the Secondary Market

45. In addition to facilitating access to spectrum based on Commission rules relating to the size of geographic license areas and spectrum blocks, the Commission also seeks comment on the extent to which it could facilitate access through possible revisions to its existing secondary markets policies and rules applicable to both unauctioned and previously auctioned licenses in the 700 MHz Band. The Commission notes that it took significant steps in 2003 and 2004 to facilitate the ability of entities, through spectrum leasing arrangements, to gain access to licensed spectrum in areas and amounts suited to their particular spectrum needs, including through a streamlined or immediate approval process for transfers and assignments of licenses.

46. Given the passage of time, the Commission now seeks comment on whether there are additional mechanisms relating to its secondary market policies that should be adopted so as to help move spectrum from licensees to other entities that place a higher value on its use. For instance, the Commission seeks comment on whether requiring licensees to make ''good faith'' efforts to negotiate with potential spectrum lessees could help increase access to spectrum, including in rural areas, and thus promote the development of these markets. Potential ''good faith'' requirements could take one of several forms. At a minimal level, licensees could be required to establish a contact point for potential lessees, *e.g.*, providing the name and contact information of a designated representative in the licensee's organization who would accept inquiries from potential spectrum lessees. Under an alternative approach, licensees could be required to engage in ''good faith'' negotiations with potential spectrum lessees, with the Commission determining the minimum steps necessary to meet this requirement. For example, 700 MHz Band licensees could be required to have a minimum number of meetings with potential spectrum lessees and/or provide their terms for an acceptable spectrum leasing arrangement. Would the use of such requirements for licensees in the 700 MHz Band encourage licensees to more seriously consider the opportunity cost

of the spectrum they hold but do not use? On the other hand, given the large number and diverse nature of potential users in this band, the Commission seeks comment on whether a requirement to, *e.g.*, establish contact and/or communicate with all interested parties would be unduly burdensome or subject to abuse. The Commission also seeks comment on whether it should adopt additional mechanisms to encourage partitioning and/or disaggregation of 700 MHz Band spectrum and the extent to which such policies ultimately may promote more service, especially in rural areas.

47. In addition, the Commission seeks comment on whether it could use its existing oversight role during the license renewal process to review a 700 MHz Band licensee's actions during its license term, including its participation in secondary market transactions, and evaluate issues related to spectrum access, service to rural areas, or both. Under this approach, licensees of unauctioned and auctioned 700 MHz Band spectrum would be subject to greater informational filings and Commission review at renewal even if they are not involved in a comparative renewal proceeding.

3. Facilitating Access to Spectrum and the Provision of Service to Tribal Lands

48. Ensuring that qualifying tribal lands have access to affordable, quality telecommunications services continues to be a goal of the Commission. Promoting access to spectrum and the provision of service on tribal lands is an important means to meet that goal. Accordingly, the Commission seeks comment on what steps, if any, it can take with regard to the 700 MHz Band to further facilitate access to spectrum and the provision of service to tribal lands. Some of these steps, such as the performance requirements discussed in this *NPRM*, generally would be applicable to the unauctioned spectrum in the 700 MHz Band. In contrast, policies to facilitate access to spectrum in tribal lands could be applied to both unauctioned and the already auctioned spectrum in this band.

49. The Commission's rules currently promote deployment of wireless services on tribal lands through its Tribal Lands Bidding Credit. The Commission seeks comment on whether it should make any potential adjustments to its Tribal Land Bidding Credit rules as they apply to the 700 MHz Band licenses to be auctioned in order to further the deployment of wireless services to tribal lands. The Commission also seeks comment on use of the Tribal Land Bidding Credit in this context given statutory requirements that the Commission commence the auction for recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds from such an auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. For instance, the Commission asks whether it needs to reduce for the 700 MHz Band auction the 180 day period that winning bidders currently have to obtain a Tribal Lands Bidding Credit. Alternatively, the Commission asks whether it should accept as sufficient from winning bidders in a 700 MHz Band auction either self-certification or a promise to negotiate in good faith with the tribal government. In either case, the Commission would thereby rely, at least in part, on the winning bidder's need to obtain consent of the tribal government to ensure that the tribes are adequately included in the process. The Commission asks what, if any, other changes should be made to the Tribal Lands Bidding Credit process in light of the special circumstances for the 700 MHz Band. In addition, given the statutory deadlines, the Commission seeks comment on whether its goal of promoting the deployment of wireless services to tribal lands would be better served with respect to the 700 MHz Band by exploring other means to promote access to spectrum and the provision of service in tribal lands.

50. The Commission also seeks comment on whether it should consider applying a ''keep what you use'' performance requirement to the tribal lands portion of geographic license areas, even if it decides to apply some other standard, such as substantial service, to all other areas of a license that are not tribal lands. In addition, the Commission seeks comment on whether any policies designed to facilitate access to spectrum, such as requiring ''good faith'' negotiations or other efforts by licensees in response to a request for a spectrum lease, should be applied specifically to tribal lands, even if the Commission decides not to apply these policies to non-tribal license areas. Similarly, the Commission asks whether there are other steps that it could take to revise its partitioning and disaggregation rules in order to better facilitate access to spectrum on tribal lands. Commenters also should consider, as discussed in this *NPRM*, whether the provision of service to tribal lands could be codified as a criteria or factor relevant to a licensee's demonstration that renewal is in the public interest.

51. To the extent the Commission should revise its performance requirements and/or policies to facilitate access to spectrum and apply these policies only to tribal lands, it seeks comment generally on how such a process should be implemented. For instance, the Commission seeks comment on how a ''keep what you use'' approach for tribal lands would operate in the event all other license areas were subject to different performance requirements. Similarly, the Commission seeks comment on the feasibility of applying one set of secondary markets rules to those portions of a license that cover tribal lands while applying different rules to the rest of a licensee's geographic area.

52. The Commission also seeks comment on whether it would facilitate access to spectrum and promote service to tribal lands to create license areas based on the contours of a reservation or any tribal boundary line. The Commission seeks comment whether adopting this policy would have the unintended consequence of partitioning off licenses covering tribal lands such that the newly created license areas will remain unbuilt, because companies will bid only for the licenses not covering the tribal lands. For instance, the Commission asks whether it would generally be economically feasible to provide service only within a tribal land service area. The Commission notes that, unlike other service areas, many tribal land service areas would result in licensed areas wholly contained within the larger geographic area of other licensees. The Commission asks whether: (1) Interference issues would be more significant because of the greater number of borders between licensed service areas; and (2) limitations of system design may make it difficult to engineer solutions around multiple small areas. It asks whether any of these technical obstacles could be mitigated by limiting tribal land license areas to tribal lands of a particular size or greater, or to those not contained wholly within another license area. The Commission also asks commenters to address possible auction-related difficulties caused by this approach, especially those for potential bidders. For instance, if the Commission were to implement this approach for a single spectrum block for which the basic geographic area was CMAs, the 585 federally recognized tribal lands, combined with the 734 CMAs, would result in 1319 separate licenses being offered for that one block.

53. Finally, in the event the Commission adopts other policies discussed in this *NPRM*, such as increasing the number of spectrum blocks made available and/or the

amount of spectrum assigned by small geographic license areas in the 700 MHz Band, the Commission seeks comment on whether policies focused solely on tribal lands would be necessary.

D. Criteria for Renewal

54. The Commission seeks comment on whether to amend its rules to clarify or modify the requirements and procedures of the renewal process for licenses in the 700 MHz Band, including both licenses that have already been auctioned and those that have yet to be auctioned. For example, the Commission seeks comment on whether to use renewal criteria to replace the procedures for the filing of competing applications at renewal time. For instance, the licenses could revert to the Commission for re-auction should a license not be renewed. The Commission also asks commenters to address whether any amendments of its rules on the renewal process should be limited to the unauctioned 700 MHz Band licenses, or whether any such amendments also should apply to those 700 MHz Band licenses which already have been auctioned in order to have a unitary regime for these licenses. The renewal criteria and process for authorizations for the 700 MHz Guard Bands at Blocks A and B in the Upper 700 MHz Band are beyond the scope of this *NPRM*.

55. The Commission first seeks comment on whether 700 MHz Band licensees should be subject to requirements at renewal in addition to any end-of-term performance requirements. Licensees are required to meet ''substantial service'' under the performance requirements of 47 CFR 27.14(a) as well as in the context of any renewal proceedings under 47 CFR 27.14(b) of the Commission's rules. Although renewal of 700 MHz Band licensees is governed under 47 CFR 27.14(b) through (d) of the Commission's rules, which indicates that a comparative process is used to choose among renewal applicants based on certain showings, the rule does not describe the factors that the Commission will consider in connection with a license renewal application to the extent no competing application is filed. When establishing the part 27 rules that apply to the 700 MHz Band, the Commission notes that it stated only that it will require that a renewal application include at a minimum the following showing for a renewal expectancy: (1) A description of current service in terms of geographic coverage and population served or links installed; (2) an explanation of the licensee's record of expansion, including a timetable for the construction of new base sites or links to meet changes in demand for service; (3) a description of the licensee's investments in its system; and (4) copies of any Commission orders finding the licensee to have violated the Communications Act or any Commission rule or policy, and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy. Although the Commission did not codify any special informational showings from 700 MHz renewal applicants unless they are ''involved in a comparative renewal proceeding'' triggered by the filing of a competing application, 47 CFR 27.14(b), licensees' renewal applications are nevertheless subject to Commission's review and approval based on general public interest factors (*e.g.*, amount and type of service provided by the licensee during its license term). Accordingly, the Commission seeks comment on whether it should amend its rules to define the standards and informational filings that apply to license renewal applications for these licenses. These criteria for renewal would apply to 700 MHz authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms. In particular, the Commission seeks comment on the requirements (or factors) that should be considered for 700 MHz Band licensees at renewal, including: the level of service and whether it was ''substantial''; whether service was ever interrupted and discontinued; whether service has been provided to any rural areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. Commenters should address which, if any, of these or other elements should be codified as requirements for renewal or, in the alternative, whether the Commission should list factors that are relevant to a licensee's demonstration that renewal is in the public interest.

56. In addition, the Commission seeks comment on whether it should integrate 47 CFR 27.14(a)'s ''substantial service'' performance requirement, and any new end-of-term requirements, into the renewal process for 700 MHz Band licenses. The Commission notes that, in its past orders, it focused on renewal in the context of partitioned and disaggregated licenses, and stated that to the extent a licensee meets the substantial service performance requirement, it will be deemed to have met this element of the renewal expectancy requirement regardless of which of the construction options it has chosen. Accordingly, to the extent the Commission's renewal requirements and at least some of its performance requirements apply at the end of a license term, the Commission seeks comment on the advantages and disadvantages of combining these requirements into, for example, a single substantial service provision in 47 CFR 27.14 of the Commission's rules. This rule section requires that licensees demonstrate ''substantial'' service both as a ''construction requirement'' ''within the prescribed license term'' and to obtain a renewal expectancy preference in a comparative hearing. 47 CFR 27.14(a) and (b). Thus, the Commission's rules require substantial service by the end of a 700 MHz Band licensee's term, the same point at which renewal filings would be reviewed and potentially granted. See 47 CFR 27.14(a).

57. For instance, instead of requiring the enforcement of separate rules regulating construction or discontinuance of service, see 47 CFR 1.955(a)(3) (providing that wireless licenses automatically terminate if service is permanently discontinued and stating that ''permanent discontinuance'' is defined in either the specific authorization or the service rules governing that authorization); but see 47 CFR 27.66 (requiring Part 27 licensees that discontinue service to notify the Commission in certain contexts, but not providing a definition of ''permanent discontinuance''), the Commission could replace such end-of-term/mid-term requirement(s) and require 700 MHz Band licensees to submit informational showings in their renewal applications based on factors that could be used to determine whether a grant of renewal is in the public interest. Under this approach, all licensees, included those holding authorizations that have been assigned, transferred, partitioned or disaggregated during their license terms, would be subject to review on these criteria, and the Commission would not need to have separate procedures for assessing satisfaction of construction standards (*e.g.,* standards pertaining to partitioned licenses under 47 CFR 27.15(d)(1)), and for determining whether renewal criteria have been met. In the event that the Commission decides to integrate performance requirements and end-of-term requirements into the renewal process for 700 MHz Band licensees, the Commission seeks comment on whether

licensees who fail to meet such requirements could be subject to potential forfeiture penalties. If, for example, a licensee files for renewal, but fails to meet the substantial service requirement, the Commission seeks comment on whether it could be subject to forfeiture penalties under this approach.

58. Finally, under a modified or combined 47 CFR 27.14 standard, the Commission seeks comment on whether to use codified renewal criteria to measure the 700 MHz Band licensees' level of service instead of relying on any performance incentives that may arise due to the possibility of competing applications being filed against a renewal (with the concomitant need for the incumbent to demonstrate ''substantial service'' to receive a renewal expectancy preference). Although 47 CFR 27.14(b) through (d) of Commission rules indicates that a comparative process is used to choose among renewal and competing applicants, it is unclear what type of comparative hearing is to be employed. Under a modified 47 CFR 27.14 of the Commission's rules, the Commission could eliminate the filing of competing applications at renewal time and, for example, adopt a process by which licenses revert to the Commission for re-auction if a license is not renewed. To the extent such an approach is adopted, commenters should address the procedures for renewal processing, the components of a renewal filing and any demonstrations of ''substantial'' service or other requirements, provisions for petitions to deny renewal applications, and procedures governing dismissal/denial of renewal applications and subsequent re-licensing through competitive bidding to competing bidders. For example, if the Commission dismisses or denies a renewal application, the spectrum could automatically revert to either the Commission (in the case of geographic-area licenses) to re-license using competitive bidding or to the geographic-overlay licensee (in the case of site-specific licenses subject to reversionary rights for geographic-overlay licensees) as part of its licensed service area. Moreover, the petitioner could be eligible to participate in any auction of the non-renewed license. In addition, the Commission seeks comment on whether the petition to deny process, coupled with the ability of a petitioner to participate in any subsequent auction to re-license spectrum that reverts to the Commission for lack of renewal, creates sufficient incentives to challenge inferior service or poor qualifications of licensees at renewal and thereby protect the public interest.

E. Length of License Terms

59. The Commission seeks comment on whether the license terms applicable to both the unauctioned and auctioned spectrum in the 700 MHz Band should be revised and, if so, in what manner. As the Commission notes, the Guard Band spectrum, and the rules applicable thereto, is not within the scope of this *NPRM*. Section 27.13(b), 47 CFR 27.13(b), of the Commission's rules provides that initial license authorizations for spectrum in the 700 MHz Band will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations. The Commission also asks whether the Commission should establish a uniform license term regardless of regulatory status associated with the services being provided.

60. The Commission seeks comment on whether the license terms for both the unauctioned and already auctioned 700 MHz Band licenses should be revised in consideration of the delays in auctioning most of the licenses in the 700 MHz Band, the new mandate under the DTV Act to auction all spectrum in the 700 MHz Band by a date certain, and/or the establishment in the DTV Act of a date certain for the end of the DTV transition. Comments should address the impact that these factors may have on the development and use of the spectrum in the context of the appropriate license term length for the 700 MHz Band. The Commission notes that the period extending from the new firm deadline for the DTV transition, February 17, 2009, to the current January 1, 2015, termination date set forth in 47 CFR 27.13(b) is shorter than both the ten-year license term generally afforded to many other (including CMRS) licensees and the eight-year average time for complying with the performance requirements which the Commission considered when the current rule was first adopted in 2000. The Commission seeks comment on whether the changes to the DTV transition mandated by the DTV Act warrant a modification of the license terms currently in 47 CFR 27.13(b) of the rules. The Commission also seeks comment on other considerations and developments that would support (or not support) extending or revising the license terms of these licenses.

61. In the event that a change in the license term for these 700 MHz Band licenses is warranted, the Commission seeks comment on what new license terms should be adopted. First, the Commission invites comment on whether it should adopt a new initial license term that would extend to a date certain, and what that date should be. For instance, the Commission seeks comment on whether the license term should extend until February 18, 2017. Consistent with the Commission's adoption of a license term that recognized an eight-year period after the then-target date for the end of the DTV transition, a new license term extending until February 18, 2017 would cover a period of eight years after the new firm deadline for the transition. The Commission also seeks comment on whether some other specific date may be more appropriate.

62. In the alternative, the Commission seeks comment on whether a new license term should extend for a specified period of time rather than be tied to a specific termination date and, if so, what that period of time should be. For instance, the Commission seeks comment on whether the license term should be amended to extend for a period not to exceed ten years from the date of initial issuance or renewal. There may also be factors that relate specifically to the 700 MHz Band that support adopting a license term of some other length than ten years. Thus, the Commission seeks comment on whether 47 CFR 27.13(b) should be revised to provide a different term, either longer than ten years (*e.g.,* 15 years), or less than ten years if conditions warrant such a change.

63. The Commission asks that comments on the length of license terms also address its discussion in this *NPRM* concerning potential revisions to the performance requirements for licensees in the 700 MHz Band. The ''substantial service'' construction requirement in Section 27.14(a) of the rules requires that licensees make a ''substantial service'' showing ''within the prescribed license term set forth in § 27.13.'' See 47 CFR 27.14(a). If the Commission alters the length of license term, commenters should consider whether the Commission should modify or amend the existing performance requirements in 47 CFR 27.14.

64. Finally, the Commission seeks comment on whether to establish a uniform license term for all services provided by 700 MHz Band licensees, regardless of regulatory status. Licensees in the 700 MHz Band are authorized to provide a combination of different services in a single license: Common

carrier, non-common carrier, private internal communications, and broadcast services. These licensees also are permitted, consistent with Commission rules, to switch their regulatory status at any time prior to the end of their license period. As reflected in 47 CFR 27.13(b) of the rules, to the extent licensees offer services that qualify as broadcasting under the Communications Act, an eight-year license term applies from the onset of broadcast operations, whereas the license term extends until January 1, 2015 for non-broadcast operations. The Commission seeks comment on the impact of the two different license terms set forth in 47 CFR 27.13(b), depending on the service offered, on those situations where a licensee deploys services with both broadcast and non-broadcast components under a single license authorization. The Commission also seeks comment on the operation and impact of the two license terms on those situations where a licensee changes the type of service offered between broadcast and non-broadcast services during the term of the license. The Commission also seeks comment on what changes, if any, should be made to its current approach of administering different license terms within a single authorization.

F. Power Limits and Related Requirements

65. The Commission seeks comment on whether to modify the power limits that apply to base stations operating in either the unauctioned or auctioned spectrum in the 700 MHz Band. Power limits for the Guard Band and Public Safety spectrum is beyond the scope of this *NPRM.*

66. The Commission seeks comment on whether, and to what extent, the power limit of 1 kW ERP, which currently applies to base stations operating in Blocks C and D of the Upper 700 MHz Band, should be revised. Specifically, commenters should address whether a need or demand exists for a higher power limit in the Upper 700 MHz Band and what additional types of services could be implemented in the band if a higher power limit is permitted. The Commission requests that any commenters that propose raising the power limit in the Upper 700 MHz Band submit a technical analysis showing how their proposal would not increase the risk of interference to adjacent operations. Because the Commission is concerned that any increase in power beyond the current 1 kW ERP limit could cause interference to Public Safety and Guard Band systems operating in the Upper 700 MHz Band, commenters should address whether permitting higher powered transmissions could cause interference to Public Safety or Guard Band operations. Specifically, the Commission seeks comment on whether a higher power limit, along with a 3 milliwatts/m2 or similar PFD limit, will adequately protect Public Safety and Guard Band mobile and base station operations from interference. If not, the Commission asks what PFD limits, or other restrictions, would be necessary to protect such operations. As the Commission discusses in the *NPRM,* the protection of commercial base stations from high-powered adjacent band transmissions is achieved through, among other things, the significant height differential that is likely to exist between high-powered transmitting antennas and commercial base station receive antennas. However, because Public Safety and Guard Band base station antennas may not operate at the same low heights as commercial base station antennas, Public Safety and Guard Band base stations could be susceptible to interference from adjacent band, high-powered base stations. Thus, more stringent technical requirements would appear to be needed to protect such stations. Given the importance the Commission attaches to preventing interference to Public Safety operations, the Commission will not adopt any modifications to its power limit rules that would cause interference to such operations in the Upper 700 MHz Band.

67. The Commission seeks comment as well on whether a PFD limit would necessarily have to be applied to high-powered transmissions originating in all upper and lower C and D block spectrum in the Upper 700 MHz Band, or whether it might be necessary to apply PFD limits to stations operating in only certain Upper 700 MHz Band spectrum blocks to protect Public Safety and Guard Band operations. In the event the Commission finds that certain spectrum blocks could accommodate such transmissions without the need for a PFD limit, the Commission asks commenters whether it should permit high-powered transmissions only on these spectrum blocks.

68. The Commission also asks whether, if commenters believe that a general approach of employing PFD limits may not be sufficiently effective in preventing interference from higher-powered transmissions to adjacent channel operations, or if such transmissions could potentially cause interference to co-channel operations, the Commission should limit any increase in permissible power to, *e.g.,* 20 kW, 10 kW, or 5 kW ERP, or not modify the current 1 kW ERP power limit at all. Commenters should also address whether such ''intermediate'' power limits in the Upper 700 MHz Band might be able to be implemented in some, or all, of the commercial Upper 700 MHz Band spectrum without the need for PFD limits to protect adjacent channel operations. In addition, regardless of whether the Commission decides to increase the power limit for base stations in the Upper 700 MHz Band, the Commission asks if it should, consistent with PCS and AWS, double the existing power limit, to 2 kW ERP, for rural areas only in the Upper 700 MHz Band (without the need for a PFD limit) and what benefit such an increase might provide in the provision of service in rural areas.

69. Finally, the Commission seeks comment on whether any additional modifications to its Upper 700 MHz Band power limit rules would be appropriate. For example, in the event that the Commission authorizes base stations operating in all or in portions of the commercial blocks in the Upper 700 MHz Band to employ higher powered transmissions, the Commission asks whether it should adopt the same notification procedures for high-powered Upper 700 MHz Band operations that the Commission currently applies to high-powered Lower 700 MHz Band operations, and asks whether such notification procedures will adequately protect other Upper 700 MHz Band licensees from interference.

70. The Commission also seeks comment on whether to revise the 50 kW ERP power limit that applies to base stations operating in the Lower 700 MHz Band. In the first instance, the Commission seeks comment on whether to revise the power limit with respect to the unauctioned portion of the Lower 700 MHz Band.

71. The Commission also asks whether it should reduce the current power limit to, *e.g.*, 20 kW, 10 kW, 5 kW ERP, or even to 1 kW ERP because of possible concerns that the Lower 700 MHz Band PFD limit does not adequately limit adjacent channel interference from 50 kW ERP transmissions or believe that the potential exists for co-channel interference from transmissions at that power level. Finally, commenters should address whether the Commission should, consistent with PCS and AWS, adopt a power limit of 2 kW ERP for rural areas only (without the need for a PFD limit) for base stations operating in the Lower 700 MHz Band.

72. The Commission also seeks comment on whether any revisions to the Lower 700 MHz Band power limit should be uniformly applied across the entire band, *i.e.*, including the existing licenses in Blocks C and D as well as the unauctioned Blocks A, B, and E. The Commission seeks comment on whether, and to what extent, applying a revised power limit to existing licenses in Blocks C and D to provide for uniform treatment across the band, will promote the public interest, convenience, and necessity, or the provisions of the Communications Act, as amended. The Commission also asks that commenters address whether any public interest benefits resulting from a change in the Lower 700 MHz Band power limit would outweigh any additional costs that may be associated with such a change.

73. Finally, the Commission seeks comment on whether any additional modifications to its Lower 700 MHz Band power limit rules would be appropriate. For example, the Commission seeks comment on whether the current notification procedures that apply to high-powered Lower 700 MHz Band operations will adequately protect adjacent band Lower 700 MHz Band licensees from interference.

G. 911/E911 and Hearing Aid-Compatible Wireless Handsets

74. The Commission tentatively concludes that it should amend its part 20 rules to clarify that certain services offered using both unauctioned and previously auctioned spectrum in the 700 MHz Band and spectrum in other bands subject to part 27, such as AWS–1, should be subject to the 911/E911 and hearing aid-compatibility requirements.

75. Sections 20.18(a) and 20.19(a), 47 CFR 20.18(a) and 20.19(a), currently specify that service providers within certain enumerated radio services (cellular, PCS, and Specialized Mobile Radio (SMR)) are subject to the 911/E911 and hearing aid-compatibility requirements. These rule sections have not been expanded to include licensees providing service in later authorized, additional wireless services such as in the 700 MHz Band, although many of the services permitted in the 700 MHz Band can be expected to be very similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements.

76. In 2003, the Commission broadened the scope of its wireless E911 rules, which applied only to licensees of particular services specified in the rules, so that the requirements extended to various other services and devices to the extent that they met certain specified criteria. Under that action, a service or device provider, whether or not it is a licensee, is to be subject to E911 rules based on whether: (1) It offers real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local exchange service; and (4) it is technically and operationally feasible for the service or device to support E911. The Commission also may use other factors in making its determination. Applying these criteria, the Commission determined in 2003 to amend its rules to include additional service offerings within the scope of the E911 requirements, including telematics, and resold and prepaid mobile wireless services.

77. Based on the past establishment of these criteria, the Commission tentatively concludes that services provided in the 700 MHz Band that meet these criteria should be subject to the 911/E911 requirements. The Commission also tentatively concludes that services provided in the 700 MHz Band that meet these same criteria, with some minor adjustments respecting access to hearing aid-compatible phones, should be subject to the hearing aid-compatibility requirements. Further, the Commission tentatively concludes that the public safety and accessibility objectives of the 911/E911 and hearing aid compatibility rules would be served by application of these rules to services provided in the 700 MHz Band and meeting the above criteria. The Commission seeks comment on these tentative conclusions.

78. The Commission expects as well that other services provided, at least in part, using spectrum subject to part 27, such as AWS–1, may meet the above criteria and thus also should be subject to 911/E911 and hearing aid-compatibility requirements. Accordingly, the Commission seeks comment on a tentative conclusion that services provided using bands subject to part 27, including AWS–1, that meet these criteria should also be subject to the 911/E911 and hearing aid-compatibility requirements. The Commission also seeks comment on what changes to the industry standard governing digital wireless handsets compatibility with hearing aids, ANSI C63.19–2006, would be necessary in order to establish measurement methods and parametric requirements for services provided in the 700 MHz Band. In addition, the Commission seeks comment on the time necessary to complete such changes to the standard.

79. Finally, 47 CFR 20.18(a) and 20.19(a) presently limit the applicability of the 911/E911 and hearing aid compatibility requirements to specific radio services. As a result, the Commission would need to propose rule amendments to apply the 911/E911 and hearing aid-compatibility requirements each time a new service is authorized in the future that would meet the above criteria. Therefore, the Commission seeks comment on whether the Commission should amend 47 CFR 20.18(a) and 20.19(a) to ensure that all similar wireless services that meet the four above criteria will be subject to the 911/E911 and hearing aid-compatibility requirements.

III. Procedural Matters

A. Regulatory Flexibility Act

80. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this *NPRM.* The IRFA is set forth in the Appendix to the *NPRM.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *NPRM,* and must have a separate and distinct heading designating them as responses to the IRFA. Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band. In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Public Law 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, the IRFA in the Appendix of the *NPRM* includes an analysis of (and seeks comment on) this impact in connection with all spectrum that falls within the scope of this *NPRM,* including spectrum in the 746–806 MHz Band.

B. Paperwork Reduction Act of 1995

81. This *NPRM* 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 *NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before September 20, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 (see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission notes, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act. Consolidated Appropriations Act 2000, Public Law 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

C. Other Procedural Matters

1. Ex Parte Presentations

82. The rulemaking this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b) of the Commission's rules.

2. Comment Filing Procedures

83. Pursuant to 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 20, 2006 and reply comments on or before October 20, 2006. All filings related to this *NPRM* should refer to WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309. 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.

84. 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. ECFS filers must transmit one electronic copy of the comments for WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309. 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.

85. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper should also send a copy of their comments to: Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC 20554; and Bill Stafford, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6221, Washington, DC 20554. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

86. Parties shall serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

87. Documents in WT Docket No. 06–150, CC Docket No. 94–102, and WT Docket No. 01–309 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., 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.*

3. Accessible Formats

88. 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). Contact the Commission to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, etc.) by e-mail: *FCC504@fcc.gov*; phone: 202–418–0530 (voice), 202–418–0432 (TTY).

IV. Initial Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in this *NPRM.* Written public comments are

requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

90. Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band. In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Public Law 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A) through (B); see 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A) through (B). The Commission nevertheless believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this *NPRM*, including spectrum in the 746–806 MHz Band.

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

91. In the *NPRM*, the Commission seeks comment on possible changes to the rules governing wireless licenses in the 700 MHz Band, spectrum that does not include the Upper 700 MHz Guard Bands nor the portions of the Upper 700 MHz Band that have been allocated for public safety services. These spectrum bands in the 698–806 MHz band have been allocated to new fixed, mobile, and broadcast services. Under the DTV Act, the Commission is required to commence an auction of previously unauctioned spectrum in the 700 MHz Band no later than January 28, 2008. In response to the changes made by the DTV Act affecting the 700 MHz Band, and because more than four years have passed since the Commission previously established band plans and service rules for this spectrum, the *NPRM* revisits some of the Commission's earlier decisions regarding the service rules for licenses in this band.

92. Specifically, the *NPRM* seeks comment on whether there is a need to revise the size of the geographic service areas for the remaining unauctioned spectrum in the band, including the possibility of using smaller areas, such as the 734 CMAs composed of MSAs and RSAs. The *NPRM* then seeks comment on whether to modify the size of certain 700 MHz Band spectrum blocks, including the possibility of dividing Block D in the Upper 700 MHz Band into smaller blocks. The *NPRM* also requests input on whether to add or revise performance requirements for unauctioned spectrum, including such alternatives as specific construction benchmarks. In addition, the *NPRM* seeks comment on options that may facilitate access to spectrum in the secondary market for all licenses in the 700 MHz Band, as well as on policies the Commission could implement to promote service to tribal lands.

93. The *NPRM* then seeks comment on several additional issues relating to both auctioned and unauctioned licenses in the 700 MHz Band. For these licenses, comment is sought on whether to clarify or modify the rules and criteria for license renewal. The *NPRM* also seeks comment on whether to revise and possibly extend the term of licenses, as well as whether to modify the existing power limits in both the Upper 700 MHz and the Lower 700 MHz Bands. In light of the importance of public safety operations in the 700 MHz Band, the Commission states that it would take no action that would cause harmful interference to public safety licensees in the band.

94. Finally, the *NPRM* requests comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to part 27 of the rules, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar wireless services, referred to as Wireless Radio Services (WRS).

B. Legal Basis

95. The potential actions about which comment is sought in this *NPRM* would be authorized pursuant to the authority contained in Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610.

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

96. 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).

97. This *NPRM* could result in rule changes that, if adopted, would create new opportunities and obligations for Commission wireless licensees. Under the *NPRM*, any of the changes to the Commission's rules which may occur as a result of the *NPRM* would be limited to Upper 700 MHz and Lower 700 MHz Band licensees in the 698–746, 747–762, and 777–792 MHz spectrum bands, with one exception. In the *NPRM*, the Commission seeks comment on the tentative conclusion that services provided in the 700 MHz Band, and in other bands subject to part 27, should be subject to requirements concerning 911/E911 and hearing aid-compatible handsets to the extent they meet certain criteria. The *NPRM* then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Thus, because such revisions potentially could affect small entity licensees holding licenses in many wireless services (and not just bands which are subject to part 27 of the Commission's rules), this IRFA includes estimates of the number of small entities in each of the categories of WRS identified below.

98. Since this rulemaking proceeding applies to multiple services, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities

currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this *NPRM*.

1. Part 27 Miscellaneous Wireless Communications Services (MWCS)

99. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. 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. The SBA has approved these definitions. 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.

100. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission 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. 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. 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. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. 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.

101. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order authorizing service in the Upper 700 MHz band. An auction for these licenses, previously scheduled for January 13, 2003, was postponed.

102. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has 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. 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. Additionally, the Lower 700 MHz Band 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. The SBA has approved these small size standards. 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. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

103. *Government Transfer Bands*. The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. 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.

104. *Advanced Wireless Services.* In the AWS–1 Report and Order, the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission did not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipated that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the AWS–1 Report and Order adopts the same small business size standards that the Commission adopted for the broadband PCS service. In particular, the AWS–1 Report and Order defines a ''small business'' as an entity with average annual gross revenues for the

preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The AWS–1 Report and Order also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

105. Broadband Radio Service (formerly Multipoint Distribution Service) and Educational Broadband Service (formerly 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). In its recently issued BRS/EBS Report and Order in WT Docket No. 03–66, the Commission comprehensively reviewed its policies and rules relating to the ITFS and MDS services, and replaced the MDS with the Broadband Radio Service and ITFS with the Educational Broadband Service in a new band plan at 2495–2690 MHz. 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. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates 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.

106. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

2. Additional Wireless Radio Services (WRS)

107. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' Under that SBA category, a business is small if it has 1,500 or fewer employees. For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

108. *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, the Commission applies 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. For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

109. *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 subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission 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. 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. 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. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 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. 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. 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.

110. *Paging.* 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. 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. The SBA has approved this definition. 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 sold. Fifty-seven companies claiming small business status won 440 licenses. 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. 132 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. Currently, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the Commission's Trends in Telephone Service, 375 such carriers reported that they were engaged in the provision of either paging or ''messaging service.'' Of

these, the Commission estimates that 370 are small, under the SBA-approved small business size standard. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

111. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission 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. 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. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

112. *Narrowband Personal Communications Service.* The Commission held an auction for Narrowband Personal Communications Service (PCS) licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second 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. Through these auctions, the Commission awarded a total of forty-one licenses, 11 of which were obtained by four small businesses. 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 Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

113. *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. 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. The SBA has approved these small business size standards for the 900 MHz Service. 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 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. 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.

114. The auction of the 1,050 800 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. 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. 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.

115. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does 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. The Commission assumes, 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 established by the SBA.

116. *Private Land Mobile Radio.* Private Land Mobile Radio (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, the Commission 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. 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 services but instead use the licensed facilities in support of other business activities, the Commission notes that the current Census numbers are likely overbroad. The Commission also notes that, for some such licensees, it might be appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

117. *Fixed Microwave Services.* Fixed microwave services include common

carrier, private-operational fixed, and broadcast auxiliary radio services. Currently, 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 yet defined a small business with respect to microwave services. For purposes of this analysis, the Commission will use the SBA's definition applicable to ''Cellular and Other Wireless Telecommunications'' companies—that is, an entity with no more than 1,500 persons. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is 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 22,015 or fewer small common carrier fixed licensees and 61,670 or fewer small private operational-fixed licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted as a result of the *NPRM.* The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

118. *39 GHz Service.* The Commission defines ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. ''Very small business'' 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. The SBA has approved these definitions. 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.

119. *Local Multipoint Distribution Service.* An auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. 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 bidders that won 119 licenses.

120. *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). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission 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. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission 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. A very small business is 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. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under its 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, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

121. *Location and Monitoring Service.* Multilateration Location and Monitoring Service (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. 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. These definitions have been approved by the SBA. An auction for multilateration 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. The Commission cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions. In addition, there are numerous site-by-site non-multilateration licensees, and the Commission does not know how many of these providers have annual revenues of no more than $15 million. The Commission assumes, for purposes of this analysis, that all of these licenses are held by small entities, as that small business size standard is established by the SBA.

122. *Rural Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted as a result of the *NPRM.*

123. *Air-Ground Radiotelephone Service.* The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

124. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this analysis, that all of the 55 licensees

are small entities, as that term is defined by the SBA.

125. *Multiple Address Systems.* Entities using Multiple Address Systems (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. ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years. The SBA has approved of these definitions. 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. Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, 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. 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.

127. *Incumbent 24 GHz Licensees.* The rules at issue could 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 Commission did not develop a definition of small entities applicable to existing licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. The Commission understands 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.

128. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, the Commission has 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. ''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. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

129. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The Census Bureau has defined a category of Cable and Other Program Distribution as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

130. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

131. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

132. *Multichannel Video Distribution and Data Service.* Multichannel Video Distribution and Data Service (MVDDS) is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. Licenses in this service were auctioned in January 2004, with 10 winning bidders for 192 licenses. Eight of these 10 winning bidders claimed small businesses status for 144 of these licenses.

133. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

134. *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. 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 the Commission's evaluations in this analysis, the Commission estimates 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. 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.

135. *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 the rules. 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). 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 adopted. Since all such entities are wireless, the Commission applies the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons. 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 proposed rules.

136. Despite the paucity, or in some instances, total absence, of information about their status as licensees or regulatees or the number of operators in each such service, users of spectrum in these services are listed as a matter of Commission discretion in order to fulfill the mandate imposed on the Commission by the RFA to regulate small business entities with an understanding towards preventing the possible differential and adverse impact of the Commission's rules on smaller entities. Further, the listing of such entities, despite their indeterminate status, should provide them with fair and adequate notice of the possible impact of the instant proposals.

137. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees in these services. Governmental entities 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.

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

138. The *NPRM* seeks to evaluate whether changes to the existing service rules pertaining to 700 MHz Band licenses may ultimately permit more effective use of this spectrum to better meet the needs of today's consumers. To the extent the Commission's past decisions no longer reflect the best approach with regard to the license area sizes, band plan, performance requirements, renewal criteria, length of license terms, power limits, and 911/E911 & hearing aid-compatibility requirements, the *NPRM* seeks comment on the possibility of making appropriate adjustments to various requirements that will serve the public interest.

139. Although the *NPRM* does not propose any specific rules with new reporting, recordkeeping or other compliance requirements for small entities on the aforementioned issues, the Commission is open to comment on what, if any, requirements it should, or should not, impose for small entities if it adopts new rules based on the proposals in the *NPRM.* For example, there is the possibility that modifying performance requirements and secondary market provisions for certain 700 MHz Band licenses could require new reporting and recordkeeping practices for small entities regarding where and how spectrum is used. In addition, new renewal criteria could possibly be established such that the Commission would codify new requirements for renewal or, in the alternative, list factors that are relevant to licensees' (including small entities') informational showings that renewal is in the public interest. Under such a proposal, the *NPRM* states that such licensees may have to report on factors such as the level of service and whether it was ''substantial''; whether service was ever interrupted and discontinued; whether service has been provided to any rural or tribal areas; whether a licensee has received any requests from others seeking to enter into spectrum leasing arrangements, and whether it has entered into any such arrangements; and any other factors typically associated with assessments of a licensee's level of service to the public. The *NPRM* also seeks comment on whether any additional modifications to 700 MHz Band power limit rules would be appropriate; in this regard, it states that such action could result in, *e.g.*, the use of the notification procedures for high-powered Upper 700 MHz Band operations that are currently applied to high-powered Lower 700 MHz Band operations. A tentative conclusion to require certain 700 MHz Band, and part 27, licensees to comply with the 911/E911 and hearing aid-compatibility requirements (as well as seeking comment on whether to apply these requirements to licensees in other WRS) is another example of a projected compliance requirement that could affect small entities.

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

140. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities.

141. In the *NPRM*, the Commission specifically considers small business alternatives in seeking comment on the existing size of geographic service areas for the 700 MHz Band. Specifically, the *NPRM* seeks comment on whether there is a need for additional small geographic service area licenses in the band, such as the 734 CMAs. The Commission notes that the Rural Cellular Association claims that small entities are unable to compete effectively for licenses that combine rural and major metropolitan areas and the availability of RSAs (as opposed to other small units) is especially important to small and rural carriers given their potential greater interest in serving these high-cost areas than large regional and nationwide carriers.

142. On this question of the optimal size of the service areas for the 700 MHz Band, the *NPRM* seeks comment on whether firms, including small entities, need additional access to spectrum over small service areas. It considers in general the economic impact to small entities of the possible transaction costs associated with the assignment of additional spectrum over small and large service areas alike. For example, the *NPRM* seeks comment on the factors that the Commission should use in balancing the needs of small and rural carriers as well as large and national carriers as they seek to provide service to their rural customers.

143. The *NPRM* also seeks comment on the optimal service area size(s) for the remaining unauctioned licenses to the extent a demonstrated need exists for smaller or other sized areas. With respect to impacts to small entities, the *NPRM* states that both large nationwide providers as well as small regional and rural providers may be able to make use of the 700 MHz Band, yet explains that the optimal size of geographic service area is different for these two types of providers, and licenses for areas that are larger or smaller than desired will impose transaction costs on those parties that wish to acquire them. The *NPRM* seeks comment on the degree and likelihood of such economic costs as 700 MHz Band spectrum is licensed in the future, and the extent to which the transaction costs of aggregating, disaggregating, or partitioning spectrum are a significant concern for those parties that most highly value this spectrum, including small entities. The *NPRM* also discusses how certain providers in the 700 MHz Band have focused on smaller sized service areas, and it notes that a number of small providers have acquired Lower 700 MHz Block C spectrum apparently to provide services specifically to rural areas over RSAs. Thus, the *NPRM* seeks comment on what the optimal size for smaller areas would be, as well as how the size of licensed geographic service area impacts the services that are currently being developed, and which may be developed, for use of the 700 MHz Band.

144. The *NPRM* then seeks comment on which spectrum blocks in the 700 MHz Band would be suitable for licensing over small or other sized areas. Specifically, the Commission seeks comment on the impact of designating the unpaired 6 megahertz Block E in the Lower 700 MHz Band for small-area licensing. Regarding this significant alternative, the *NPRM* inquires if 6 megahertz is sufficient to meet small and/or rural carriers' spectrum needs, and asks commenters to address whether there are broadband technologies that can operate on unpaired spectrum such that the 6 megahertz of spectrum in Block E would be suitable for potential reassignment. Taking into account the resources available to small entities, the NPRM also addresses how any need for small and rural carriers to provide adjacent TV Channel 51 protection might affect their ability to provide service to those areas if Block A were designated for small area licensing.

145. In addition to seeking comment on the size of service areas, the Commission seeks comment on possibly changing the size of spectrum blocks in the 700 MHz Band plan. To the extent the Commission decides to auction and assign additional licenses over service area sizes other than the six EAGs, the *NPRM* seeks comment on whether reconfiguring or sub-dividing existing spectrum blocks in the band plans in the 700 MHz Band could better accommodate such assignments and thereby facilitate access to spectrum by small entities. In particular, the *NPRM* seeks comment on dividing the 20-megahertz Block D license in the Upper 700 MHz Band into two or more license blocks to create additional opportunities for firms to acquire spectrum, including small business and rural providers.

146. In the next section of the *NPRM*, the Commission seeks comment on whether it should take additional action with regard to the spectrum in the 700 MHz Band so as to help facilitate access to that spectrum and the provision of service to all consumers, including those in rural areas. In contrast to the significant alternatives on the size of geographic service areas and/or spectrum blocks that may help increase access to spectrum at auction for a wide variety of entities, this section seeks comment on whether the Commission's existing ''substantial service'' performance requirements and related policies pertaining to 700 MHz Band licenses serve to facilitate deployment of wireless services in the 700 MHz Band. For example, the *NPRM* seeks comment on significant alternatives that impact small entities, such as the possibility of adopting ''keep what you use'' re-licensing mechanisms. It also seeks comment on options that may facilitate access to spectrum in the secondary market for all potential service providers, including small entities and those specifically seeking to deliver service to rural areas and tribal lands.

147. The next portions of the *NPRM* seek comment on potential changes to several of the Commission's initial determinations applicable to 700 MHz Band licenses, changes which could affect small entities. First, the *NPRM* requests comment on whether to amend Commission rules to clarify the requirements and procedures of the renewal process for 700 MHz Band licenses, particularly as they relate to existing rules requiring demonstrations of ''substantial service'' for renewal applicants involved in comparative proceedings. Second, the *NPRM* invites comment on extending the license terms of 700 MHz Band licenses to an expiration date beyond 2015 in order to afford licensees a sufficient period of time for deployment of new 700 MHz Band services once the DTV transition is complete. Third, the *NPRM* seeks comment on whether the power limits in the existing rules for the 700 MHz Band spectrum should be revised. In addition to the possible new reporting, recordkeeping or other compliance requirements that could impact small entities, it is not anticipated that any rules adopted in this area would

adversely impact small entities. Both small and large entities may benefit from changes to these rules.

148. Finally, because Commission rules have not been expanded to include licensees (including small entities) providing service in later authorized, additional WRS such as the 700 MHz Band, the *NPRM* seeks comment on the tentative conclusion that services provided by licensees in the 700 MHz Band, and in other bands subject to part 27 of the rules such as AWS–1, should be subject to E911 and hearing aid-compatibility requirements to the same extent that such services would be covered if provided in other bands. It then seeks comment on how to modify Commission rules to ensure that they include all similar WRS. Because many of the services permitted across the WRS can be expected to be similar to services presently subject to the 911/E911 and hearing aid-compatibility requirements, the *NPRM* seeks comment on whether to amend the rules to ensure that all similar wireless services that meet certain criteria discussed in the *NPRM* will be subject to the 911/E911 and hearing aid-compatibility requirements. To minimize significant economic impact to the many firms, including small entities, that are or will become licensees in the various WRS, the *NPRM* seeks comment on impacts including, *e.g.*, the time necessary to complete such changes to the standards.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

149. None.

V. Ordering Clauses

150. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 222(d)(4)(A) through (C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4) through (5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 222(d)(4)(A) through (C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4) through (5), 251(e)(3), 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 534, 535, and 610 that this *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* are hereby *adopted.*

151. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking* on or before September 20, 2006 and reply comments on or before October 20, 2006.

152. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 06–7051 Filed 8–17–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1570, and 1572

Coast Guard

33 CFR Parts 101, 103, 104, 105, 106, and 125; 46 CFR Parts 10, 12, and 15

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration, United States Coast Guard, DHS.

ACTION: Proposed rule; notice of comment.

SUMMARY: The Department of Homeland Security, through the Transportation Security Administration and the United States Coast Guard, published an Notice of Proposed Rulemaking titled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' on May 22, 2006. In response to letters from Congress about the proposed rule, we sent out the letter below and want to make the public aware of this correspondence.

ADDRESSES: Copies of this Notice as well as the Notice of Proposed Rulemaking and Comments received are all available in the dockets for this rulemaking. The dockets are available electronically at *http://dms.dot.gov* as well as at the Docket Management Facility located in the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets may be located by the following docket numbers: TSA docket number TSA–2006–24191 or Coast Guard docket number USCG–2006–24196.

FOR FURTHER INFORMATION CONTACT: For questions related to TSA's proposed TWIC standards: Greg Fisher, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, TWIC Program, 571–227–4545; e-mail: *credentialing@dhs.gov*.

For legal questions regarding the proposed TWIC rule: Christine Beyer, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2657; facsimile (571) 571–1380; e-mail *Christine.Beyer@dhs.gov*.

For questions concerning the Coast Guard provisions of the proposed TWIC rule: LCDR Jonathan Maiorine, Commandant (G–PCP–2), United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593; telephone 1–877–687–2243.

For questions concerning viewing or submitting material to the docket: Renee V. Wright, Program Manager, Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (202) 493–0402.

SUPPLEMENTARY INFORMATION: On May 22, 2006, the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard) published a joint Notice of Proposed Rulemaking in the **Federal Register** titled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License.'' 71 FR 29396. This NPRM included a 45-day comment period and announced four public meetings to be held in Newark, NJ, Tampa, FL, St. Louis, MO, and Long Beach, CA.

Since that time, TSA and Coast Guard have received several letters from Members of Congress on the NPRM. We recently responded to these letters and wanted to share our response with the public. The body of the letter, which can also be found in the dockets for this rulemaking, reads as follows:

Thank you for your comments on the Notice of Proposed Rulemaking (NPRM)

entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' and ''Consolidation of Merchant Mariner Qualification Credentials'' published in the **Federal Register** on May 22, 2006. Your comments, perspectives and recommendations are very important in the consideration of these rulemakings and in determining the best way forward with the TWIC and associated requirements.

The Coast Guard and the Transportation Security Administration (TSA) received a number of requests similar to yours seeking additional time to comment on the proposed rules. Many of these comments also voiced concern regarding card and reader technology, analysis of economic impact, potential negative impacts to commerce, and uncertainty as to how TWIC requirements for facilities and vessels could be met.

After a review of the comments received during the comment period and the requests for extension, TSA and the Coast Guard decided not to extend the comment period for the NPRM. However, TSA and Coast Guard have concluded that facility and vessel owners and operators will not be required to purchase or install card readers during the first phase of the TWIC implementation. Additionally, a requirement to purchase and install card readers will not be implemented until the public is afforded further opportunity to comment on that aspect of the TWIC program. The details of this approach will be explained in the next rulemaking.

Thank you again for your comments on these proposed rulemakings. The views expressed by you and your constituents will assist and inform us in our decision-making process on this important effort.

Dated: August 16, 2006.

Craig Bone,

Rear Admiral, Assistant Commandant for Prevention, United States Coast Guard.

Dated: August 16, 2006.

Stephanie Rowe,

Assistant Administrator, Transportation Security Administration.

[FR Doc. 06–7055 Filed 8–17–06; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 71, No. 161
Monday, August 21, 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

August 16, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB Control Number.

Food and Nutrition Service

Title: Quality Control Review Schedule.

OMB Control Number: 0584–0299.

Summary of Collection: States agencies are required to perform Quality Control (QC) review for the Food Stamp Program (FSP). The legislative basis for the operation of the QC system is provided by Section 16 of the Food Stamp Act of 1977. The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for the Food Stamp Program and to serve as the comprehensive data entry form for FSP QC reviews.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and incentive based on error rate performance, and to estimate the impact of some program changes to FSP participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, local, or tribal government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly.

Total Burden Hours: 61,352.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–13733 Filed 8–18–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 16, 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.

Rural Utilities Service

Title: 7 CFR Part 1738, Rural Broadband Loan and Loan Guarantee.

OMB Control Number: 0572–0130.

Summary of Collection: Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), provides loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in State and territories of the United States. The regulation prescribes the types of loans available, facilities financed and eligible applicants, as well as minimum credit support requirements considered for a loan. In addition, Title VI of the RE Act requires that Rural Utilities Service (RUS) make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans

and obligations of the borrower, will be repaid in full within the time agreed.

Need and Use of the Information: RUS will collect information to determine whether an applicant's eligibility to borrow from RUS under the terms of the RE Act and that the applicant complies with statutory, regulatory and administrative eligibility requirements for loan assistance. RUS will use the information to determine that the Government's security for loans made are reasonable, adequate and that the loans will be repaid within the time agreed.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 13,480.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–13734 Filed 8–18–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0101]

Notice of Request for Extension of Approval of an Information Collection; Importation of Mangoes From the Philippines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of mangoes from the Republic of the Philippines.

DATES: We will consider all comments that we receive on or before October 20, 2006.

ADDRESSES: You may submit comments by either of the following methods:

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0101 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0101.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of mangoes from the Philippines, contact Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdal,e MD 20732–1231; (301) 734–5333. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Mangoes from the Philippines.

OMB Number: 0579–0172.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The regulations in ''Subpart—Fruits and Vegetables,'' 7 CFR 319.56 through 319.56–8, prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Under these regulations, mangoes from Guimaras Island in the Republic of the Philippines are subject to certain conditions before entering the United States to ensure that plant pests are not introduced into the United States. The regulations require the use of information collection activities including box labeling, phytosanitary certificates, and trust fund agreements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0662 hours per response.

Respondents: Philippine plant protection officials; mango producers and packinghouses on Guimaras Island, Philippines.

Estimated annual number of respondents: 1,827.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,827.

Estimated total annual burden on respondents: 121 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of August 2006.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–13722 Filed 8–18–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Homochitto National Forest, USDA Forest Service.

ACTION: Notice of new recreation fee site.

SUMMARY: Okhissa Lake is a recreational complex currently under development on the Homochitto National Forest, located near Bude, Mississippi. The lake will be open for use by the public for boating and fishing between July and November 2007. The exact opening date will depend on completing work on infrastructure needed to support fishing (restrooms, boat launch, parking lots, etc.). Other recreational day-use activities (swimming, picnicking) will be available later as amenities to accommodate them are added. The Forest Service proposes to charge $5 per vehicle for access to all day-use activities (boat launching, swimming, and picnicking). Fees will not be charged until infrastructure needed to support an activity is available for use by the public. A $50 annual pass will also be available for purchase by the public. The annual pass would allow 12-month access to all day-use activities (boat launching, swimming, and picnicking). Opportunities for developed and primitive camping will be available in the future as work needed to accommodate these activities is complete. When available, the Forest Service will charge $13 for developed camping and $7 for primitive camping. Funds received from these fees will be used for continued operation and maintenance of the recreational complex and allow additional amenities to be added in the future. Funds will also be used to enhance or restore fisheries habitat of the lake.

DATES: Recreational boating and fishing opportunities at Okhissa Lake will be available to the public between July and November 2007. Other recreational activities described above will be available as infrastructure to support them is added.

FOR FURTHER INFORMATION CONTACT: Jeff Gainey, Recreation Program Manager, 601–965–4391, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, MS 39269.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. The Homochitto National Forest currently manages only one other developed recreation site that provides camping, fishing and other day-use activities. Comparable recreational use fees are currently charted at this site. Development of Okhissa Lake and associated facilities are aimed at creating new recreational opportunities in an area that is economically depressed.

Dated: August 11, 2006.

Antoine L. Dixon,

Forest Supervisor, National Forest in Mississippi.

[FR Doc. 06–7034 Filed 8–18–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability; Final Environmental Impact Statement

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Natural Resources Conservation Service (NRCS) has prepared a Final Environmental Impact Statement consistent with the National Environmental Policy Act of 1969, as amended, to disclose potential effects to the human environment resulting from proposed flood-control improvements to Coal Creek in Cedar City, Utah.

The section of Coal Creek that traverses Cedar City, Utah, has channel stability and capacity deficiencies that pose a threat to existing infrastructure and development due to flooding. The NRCS proposes to modify the Coal Creek channel to safely convey floodwaters from a 100-year flood event. Also as part of this project, Cedar City proposes to improve and expand an existing parkway along Coal Creek to enhance aesthetic values and provide recreational opportunities for community residents and visitors.

The Final EIS presents detailed analyses for three alternatives. Alternative A—No Action, would continue the frequency and level of dredging and other management actions as they are currently planned. Existing channel and structural deficiencies would not be corrected. Recreational opportunities associated with the creek would remain as they currently exist.

Because of the purpose and need of the project, several proposed elements are common to both of the action alternatives (Alternatives B and C). Both action alternatives include modifying channel cross sections, altering the stream gradient in particular sub-reaches, stabilizing actively eroding banks, and constructing levees. Bank stabilization would be accomplished by laying the river banks back to a stable slope that supports channel stabilization methods and then armoring the banks via the use of rock (riprap), vegetation, soil cement, erosion control fabric, or some combination of these items. Existing riparian habitat and vegetation would be preserved on the streambanks, where possible. It is anticipated that both sides of the channel would be armored with riprap through the suburban corridor from Center Street to I–15 to prevent bank erosion from high stream velocities during flood events. Elements unique to each action alternative are listed below.

Alternative B—Relocate Main Street Diversion, would remove the Main Street diversion/drop structure currently in use and relocate it to near 200 East. Implementation of this alternative would require approximately 3,550 feet of pipeline to be installed, flood and slope/grading-related channel modifications from Center Street to I–15, and the continuation of periodic dredging as necessary. A sedimentation basin would be constructed to remove gravels from diverted irrigation water. The Woodbury diversion/drop structure would be reconstructed. Under this alternative, the parkway would be extended west to Airport Road and landscaped. Parkway Option B1 proposes a crosswalk at the Main Street Bridge. Parkway Option B2 proposes to access existing sidewalks from the pedestrian bridge at 400 North to cross Main Street and avoid additional property acquisition.

Alternative C—Replace Main Street Diversion, would replace the Main Street diversion/drop structure by constructing a new structure that would have approximately half the drop. Implementation of this alternative would require the installation of

approximately 4,900 feet of pipeline, flood and slope/grading-related channel modifications from Center Street to west of I–15, and the continuation of periodic dredging as necessary. Two sedimentation basins would be constructed to remove gravels from diverted irrigation water. Additionally, the Woodbury diversion/drop structure would be reconstructed to allow for the safe passage of floodwaters. Under this alternative, the parkway would be extended to Airport Road and landscaped. In addition, a historic pedestrian truss bridge would be removed to prevent channel constriction and potential flooding. Parkway Option C1 would construct an elevated pedestrian pathway under the Main Street Bridge. Parkway Option C2 would construct a large box culvert for pedestrian use just north of the bridge and under Main Street.

In response to public comment on the Draft EIS and to alleviate localized flooding tied to Coal Creek discharge levels, an additional option (the North Field Canal Option) was analyzed in the Final EIS. Under Alternative C, this option would construct a subgrade pipeline for several hundred feet along the southern portion of the North West Field Canal. It would traverse undeveloped city-owned property west of the Cedar City Cemetery, and follow the North Field Canal corridor from a point just south of 900 North Street to 1045 North Street. Water would be piped east and west along 1045 North Street to both the Union Field and Northwest Field Canals.

As required by the NRCS for water projects, the National Economic Development (NED) benefit-cost process was used to determine benefit-cost ratios for each alternative. All of the action Alternative/Option combinations have a benefit-cost ratio of 1.9:1 and are all considered viable NED Alternatives. The sole exception to this is Alternative C when coupled with Parkway Option C2 and the North Field Canal Option, which has a benefit-cost ratio of 1.8:1. This indicates that the costs and benefits of all of the alternatives are relatively consistent.

Under CEQ regulations and the NRCS National Environmental Compliance Handbook, Section 610.38—Distribution and Publication of Environmental Documents, a Record of Decision (ROD) cannot be prepared until the Final EIS has been available to the public for at least 30 days. Comments will be accepted on the FEIS during this period. Following this review period, notice of the ROD's availability will be published in the **Federal Register**.

Effective Date: September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Marnie Wilson, Coal Creek EIS, USDA—NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138–1100. Project information is also available on the Internet at: *http://www.ut.nrcs.usda.gov* under Public Notices.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS are available by request from Marnie Wilson at the address listed above. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist.

Signed in Salt Lake City, Utah, on August 11, 2006.

Sylvia A. Gillen,

State Conservationist.

[FR Doc. E6–13751 Filed 8–18–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2007 Economic Census—Commodity Flow Survey.

Form Number(s): CFS–1000, CFS–2000.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 800,000 hours.

Number of Respondents: 100,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: The 2007 Commodity Flow Survey, a component of the U.S. Census Bureau's 2007 Economic Census, will produce key information about the transportation of freight in the United States. The Commodity Flow Survey is a cooperative effort between the Census Bureau and the Research and Innovative Technology Administration's Bureau of Transportation Statistics, U.S. Department of Transportation. In addition to their funding support, the Bureau of Transportation Statistics also provides additional technical and planning guidance in the development and conduct of the program.

The Commodity Flow Survey is the only source of nationwide data on the movement of goods from origin to destination by all modes of transportation and for multi-modal combinations. This survey provides a crucial set of statistics on the value, weight, mode, and distance of commodities shipped by establishments in mining, manufacturing, wholesale, and other selected industries. The Census Bureau will publish these statistics at the national, Census Region, Census Division, state, and Metropolitan Area levels. We will also publish separate special reports on export shipments and on shipments of hazardous materials.

The Department of Transportation consistently views updated information on freight flows as critical to understanding markets, consequences, and investment needs. They also are important to effective analyses of economic development, social issues, and the environment; and for a variety of private sector decisions.

Federal, State, and local government agencies spend more than $100 billion annually on transportation programs. The Commodity Flow Survey provides data that are critical to these agencies in making a wide range of transportation investment decisions for developing and maintaining an efficient transportation infrastructure that supports economic growth and competitiveness. Numerous other Federal, state, and local agencies require the Commodity Flow Survey data on transportation flows, as they impact the domestic economy in many ways.

Transportation planners require the periodic benchmarks provided by a continuing Commodity Flow Survey to evaluate and respond to ongoing geographic shifts in production and distribution centers, as well as policies such as ''just in time delivery'' and third-party logistics providers (also known as 3PLs).

The 2007 Commodity Flow Survey will be a mail-out/mail-back sample survey of business establishments in mining, manufacturing, wholesale, and other selected industries.

Affected Public: Business or other for-profit.

Frequency: Respondents will be asked to report quarterly for one year. The collection is conducted once every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 131, 193, and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202)482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington,

DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 15, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–13707 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

Agency: U.S. Census Bureau, Department of Commerce.

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: 2007 Economic Census Covering Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors.

Form Number(s): Too numerous to list here (97 report forms).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,424,707 hours.

Number of Respondents: 1,744,658.

Avg Hours per Response: 0.8 hours.

Needs and Uses: The 2007 Economic Census covering the information; professional, scientific, and technical services; management of companies and enterprises; administrative and support and waste management and remediation services; educational services; health care and social assistance; arts, entertainment, and recreation; and other services (except public administration) sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 2.8 million establishments classified in the North American Industry Classification System (NAICS).

The information sector comprises establishments engaged in the following processes: (a) Producing and distributing information and cultural products, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data.

The professional, scientific, and technical services sector comprises establishments engaged in processes where human capital is the major input. These establishments make available the knowledge and skills of their employees, often on an assignment basis, where an individual or team is responsible for the delivery of service to a client.

The management of companies and enterprises sector comprises two main types of establishments: (a) Those that hold the securities of (or other equity interest in) companies and enterprises; and (b) those (except government establishments) that administer, oversee, and manage other establishments of the company or enterprise.

The administrative and support and waste management and remediation services sector comprises establishments performing routine support activities for the day-to-day operations of other organizations. These essential activities are of the type often undertaken in-house by establishments in many sectors of the economy.

The educational services sector comprises establishments providing academic or technical instruction or educational support services such as student exchange programs and curriculum development.

The health care and social assistance sector comprises establishments that provide health care and social assistance to individuals.

The arts, entertainment, and recreation sector comprises establishments that operate facilities or provide services to meet varied cultural, entertainment, and recreational interests of their patrons. This sector includes (a) establishments that are involved in producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (b) establishments that preserve and exhibit objects and sites of historical, cultural, or educational interest; and (c) establishments that operate facilities or provide services that enable patrons to participate in recreational activities or pursue amusement, hobby, or leisure time interests.

The other services, except public administration sector comprises establishments in one of the following subsectors: repair and maintenance; personal and laundry services; and religious, grantmaking, civic, and professional and other similar organizations. The public administration sector is out of scope to the economic census. The U.S. Census Bureau conducts the quinquennial census of governments and other current programs that measure the activities of government establishments.

The economic census will produce basic statistics by kind of business for number of establishments, receipts/revenue, payroll, and employment. It will also yield a variety of subject statistics, including receipts or revenue by product line, receipts by class of customer, and other industry-specific measures, such as exported services or personnel by occupation. Basic statistics will be summarized for the United States, states, metropolitan areas, counties and places. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 15, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–13709 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2006]

Foreign-Trade Zone 153—San Diego, CA; Application for Subzone Status; QUALCOMM Incorporated; (Digital Wireless Telecommunication Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Diego, grantee of FTZ 153, requesting special-purpose subzone status for the manufacturing facilities of QUALCOMM Incorporated, located in San Diego, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 15, 2006.

The QUALCOMM facilities (42 buildings/5,834,524 sq. ft./257 acres/7600 employees) are located at: *Site 1*—10945 Vista Sorrento Parkway; *Site 2*—4243 Campus Point Court, 10290 and 10300 Campus Point Drive, and 10555 Sorrento Valley Road; *Site 3*—4755, 4795, 4835 and 4875 Eastgate Mall; and, *Site 4*—6262, 6455 and 6965 Lusk Boulevard, 10185 McKeller Court, 9940 and 9950 Barnes Canyon Road, 9685 Scranton Road, 5355 and 5375 Mira Sorrento Place, 5717, 5739, 5745, 5751, 5788, 5808, 5828 and 5985 Pacific Center Boulevard, 10145 Pacific Heights Boulevard, 5525–5565, 5580, 5665 and 5775 Morehouse Drive, 10309 Pacific Center Court, and 9380 and 9393 Waples Street.

The facilities are used for research and development, product testing, manufacturing, packaging, warehousing and distribution of digital wireless telecommunications products. Finished products from the manufacturing and kitting operations could include mobile communication terminal kits, test telephones and antenna control units (all duty-free). Imported parts and components that may initially be imported into the proposed subzone for manufacturing and kitting include: Antenna assemblies; cable assembly kits; keypads; labels; protectors, cap plugs; timing belts; o-rings and gaskets; screws; antenna mountings; aluminum tape; steppers; round nylon standoffs; mounting frames; delrin spacers; battery packs; receivers with adapters; parts of cellular telephony including enhanced display units, keyboards, lens assemblies, radome assemblies and filter saws; SIM cards; directional chip couplers; inductor chips; dual mode amplifiers; GPS mounting cups and cable straps; adhesive rings for GPS cups; self-thread screwlock inserts; motor-mounting nut plates; chip inductors; CPA boot codes; GPS radome patch antennas; PTC resettable poly-switches; input connector receptacles; conn. housing/solder contacts; and, digital ACU cable assemblies. Duty rates on these inputs range from duty-free to 8.6 percent.

The application also requests authority to include a broad range of inputs for other telecommunication products that QUALCOMM may produce under FTZ procedures in the future. (New major activity involving these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty-free to 20 percent.

FTZ procedures would exempt QUALCOMM from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility and entered for U.S. consumption, and to choose the duty rate that applies to the finished product instead of the rates applicable to the foreign input materials. QUALCOMM would be able to avoid duty on foreign merchandise which becomes scrap/waste, and the company also expects to realize additional savings through the use of weekly entry procedures and zone to zone transfers. The application indicates that the company will realize certain logistical benefits through the simplification and expediting of their import and export activity. QUALCOMM believes that all of the above-cited savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 20, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 6363 Greenwich Dr, Suite 230, San Diego, CA 92122; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Dated: August 15, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13788 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2006]

Foreign-Trade Zone 123—Denver, CO; Application for Subzone Status; QUALCOMM Incorporated; (Digital Wireless Telecommunication Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, grantee of FTZ 123, requesting special-purpose subzone status for the manufacturing facilities of QUALCOMM Incorporated, located in Boulder, Colorado. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 15, 2006.

The QUALCOMM facilities (5 buildings/179,278 sq. ft./22 acres/200 employees) are located at 6180, 6190, 6210 and 6290 Spine Road and 6150 Lookout Road, in Boulder, Colorado. The facilities are used for research and

development, product testing, manufacturing, packaging, warehousing and distribution of digital wireless telecommunications products. Finished products from the manufacturing and kitting operations could include mobile communication terminal kits, test telephones and antenna control units (all duty-free). Imported parts and components that may initially be imported into the proposed subzone for manufacturing and kitting include: Antenna assemblies; cable assembly kits; keypads; labels; protectors, cap plugs; timing belts; o-rings and gaskets; screws; antenna mountings; aluminum tape; steppers; round nylon standoffs; mounting frames; delrin spacers; battery packs; receivers with adapters; parts of cellular telephony including enhanced display units, keyboards, lens assemblies, radome assemblies and filter saws; SIM cards; directional chip couplers; inductor chips; dual mode amplifiers; GPS mounting cups and cable straps; adhesive rings for GPS cups; self-thread screwlock inserts; motor-mounting nut plates; chip inductors; CPA boot codes; GPS radome patch antennas; PTC resettable poly-switches; input connector receptacles; conn. housing/solder contacts; and, digital ACU cable assemblies. Duty rates on these inputs range from duty-free to 8.6 percent.

The application also requests authority to include a broad range of inputs for other telecommunication products that QUALCOMM may produce under FTZ procedures in the future. (New major activity involving these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty-free to 20 percent.

FTZ procedures would exempt QUALCOMM from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility and entered for U.S. consumption, and to choose the duty rate that applies to the finished product instead of the rates applicable to the foreign input materials. QUALCOMM would be able to avoid duty on foreign merchandise which becomes scrap/waste, and the company also expects to realize additional savings through the use of weekly entry procedures and zone to zone transfers. The application indicates that the company will realize certain logistical benefits through the simplification and expediting of their import and export activity. QUALCOMM believes that all of the above-cited savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 20, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, World Trade Center, 1625 Broadway, Suite 680, Denver, Colorado 80202; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Dated: August 15, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13787 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2006]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Application for Subzone Status; QUALCOMM Incorporated; (Digital Wireless Telecommunication Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the manufacturing facilities of QUALCOMM Incorporated, located in Cary, North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 15, 2006.

The QUALCOMM facility (49,442 sq. ft./5 acres/140 employees) is located at 2000 CentreGreen Way, Cary, North Carolina. The facility is used for research and development, product testing, manufacturing, packaging, warehousing and distribution of digital wireless telecommunications products. Finished products from the manufacturing and kitting operations could include mobile communication terminal kits, test telephones and antenna control units (all duty-free). Imported parts and components that may initially be imported into the proposed subzone for manufacturing and kitting include: Antenna assemblies; cable assembly kits; keypads; labels; protectors, cap plugs; timing belts; o-rings and gaskets; screws; antenna mountings; aluminum tape; steppers; round nylon standoffs; mounting frames; delrin spacers; battery packs; receivers with adapters; parts of cellular telephony including enhanced display units, keyboards, lens assemblies, radome assemblies and filter saws; SIM cards; directional chip couplers; inductor chips; dual mode amplifiers; GPS mounting cups and cable straps; adhesive rings for GPS cups; self-thread screwlock inserts; motor-mounting nut plates; chip inductors; CPA boot codes; GPS radome patch antennas; PTC resettable poly-switches; input connector receptacles; conn. housing/solder contacts; and, digital ACU cable assemblies. Duty rates on these inputs range from duty-free to 8.6 percent.

The application also requests authority to include a broad range of inputs for other telecommunication products that QUALCOMM may produce under FTZ procedures in the future. (New major activity involving these inputs/products would require review by the FTZ Board.) The duty rates for these inputs and final products range from duty-free to 20 percent. FTZ procedures would exempt QUALCOMM from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility and entered for U.S. consumption, and to choose the duty rate that applies to the finished product instead of the rates applicable to the foreign input materials. QUALCOMM would be able to avoid duty on foreign merchandise which becomes scrap/waste, and the company also expects to realize additional savings through the use of weekly entry procedures and zone to zone transfers. The application indicates that the company will realize certain logistical benefits through the simplification and expediting of their import and export activity. QUALCOMM believes that all of the above-cited savings from FTZ

procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 20, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 10900 World Trade Assistance Center, Suite 110, Raleigh, North Carolina 27617; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Dated: August 15, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–13786 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Trade Specialist Counseling Session Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(2)(A)).

DATES: Written comments must be submitted on or before October 20, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph Carter, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–3342; E-mail: *joseph.carter@mail.doc.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service (CS) currently uses ''Quality Assurance Surveys'' to collect feedback from U.S. business clients that use U.S. Commercial Service pay-for-use products/events provided by the organization's international offices. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. Results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In addition to collecting client feedback for pay-for-use products/events provided by the U.S. Commercial Service's international offices, the U.S. Commercial Service would like to institutionalize Counseling Session Surveys to obtain client feedback from U.S. businesses that have engaged in ''counseling sessions'' with CS International Trade Specialists in the domestic offices (known as U.S. Export Assistance Centers). Counseling sessions occur when an International Trade Specialist from one of the U.S. Commercial Service's domestic offices works with a client to determine their international marketing interests and provide ''global trade solutions''.

The purpose of the attached survey is to collect feedback from U.S. businesses that receive counseling from domestic International Trade Specialists of the U.S. Commercial Service. This information will be used for program improvement, strategic planning, and allocation of resources. Survey responses will be used to assess client satisfaction, assess priorities, and identify areas where service levels and benefits differ from client expectations. In providing these counseling services, the U.S. Commercial Service promotes the goods and services of small and medium-sized U.S. businesses in foreign markets.

II. Method of Collection

The data collection method chosen for the counseling session quality assurance survey is an e-mail message delivering a hot link to a web enabled survey. If the client does not respond to the survey within two weeks, another e-mail reminder is sent to the client.

III. Data

OMB Number: 0625–0253.

Form Number: ITA–4154P.

Type of Review: Regular Submission.

Affected Public: U.S. companies that are recruited by the U.S. Commercial Service.

Estimated Number of Respondents: 1700.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 284 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $9596.00.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 15, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–13706 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071204C]

RIN 0648–AT11

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; withdrawal of Notice of Intent.

SUMMARY: This notice retracts the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to analyze a range of alternatives for the annual allocation of the Pacific sardine harvest guideline proposed action published on July 19, 2004. Further scoping subsequent to the publication of the NOI revealed additional information indicating that it was unlikely the proposed action would result in significant environmental impacts. An Environmental Assessment (EA) was completed and a subsequent Finding of No Significant Impact (FONSI) was signed.

ADDRESSES: Copies of the Final Environmental Assessment /Regulatory Impact Review may be obtained from Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Southwest Region, NMFS, *joshua.lindsay@noaa.gov*, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The original Notice of Intent to prepare an Environmental Impact Statement (EIS)was published July 19, 2004 (69 FR 42968). The determination that the proposed action would not likely result in significant environmental impacts was based on an evaluation of the criteria listed in NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, Section 6.01 (Determining the Significance of NOAA's Actions) and 6.02 (Specific Guidance on Significance of Fishery Management Actions). To aid in this determination, the Pacific Fisheries Management Council and NMFS prepared an environmental assessment (EA) instead of an EIS to evaluate whether significant impacts would likely result from the proposed action. A final version of this EA was made available to the public on November 16, 2005 (70 FR 69502). Based on this evaluation, the Assistant Administrator for Fisheries made a Finding of No Significant Impact on June 13, 2006. In concurrence with this finding, the NOAA National Environmental Policy Act Coordinator determined there was no further need to prepare an EIS.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–13783 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072606A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two 1-year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, D.C., and persons operating under his authority.

DATES: Effective from August 16, 2006, through August 15, 2007.

ADDRESSES: Copies of the Navy's March 31, 2006, application, the LOAs, and the Navy's annual report are available by writing to 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, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289 (ext 128).

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs 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 regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on July 16, 2002 (67 FR 46712), and remain in effect until August 15, 2007. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

Summary of LOA Request

NMFS received an application from the U.S. Navy for two LOAs, one covering the *R/V Cory Chouest* and one the USNS IMPECCABLE, under the regulations issued on July 16, 2002 (67 FR 46712). The Navy requested that the LOAs become effective on August 16, 2006. The application requested authorization, for a period not to exceed 1 year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military

operations on the aforementioned ships. The application's take estimates are based on 16 nominal 9-day active sonar missions (or equivalent shorter missions) between both vessels, regardless of which vessel is performing a specific mission, not to exceed a total of 432 hours of LFA sonar transmission time combined for both vessels.

The specified geographic regions identified in the application are the following oceanographic provinces described in Longhurst (1998) and identified in 50 CFR 216.180(a): the Archipelagic Deep Basins Province, the Western Pacific Warm Pool Province, and the North Pacific Tropical Gyre West Province, all within the Pacific Trade Wind Biome; the Kuroshio Current Province and the Northern Pacific Transition Zone Province within the Pacific Westerly Winds Biome; the North Pacific Epicontinental Sea Province within the Pacific Polar Biome; and the China Sea Coastal Province within the North Pacific Coastal Biome. The operational areas are portions of the provinces but do not encompass the entire area of the provinces. Due to critical naval warfare requirements, the U.S. Navy has identified the necessity for both SURTASS LFA sonar vessels to be stationed in the North Pacific Ocean during fiscal year 2006.

Monitoring and Reporting

In compliance with the two LOAs issued in 2005, on June 9, 2006, the Navy submitted an annual report on SURTASS LFA sonar operations and the mitigation and monitoring activities conducted under those LOAs. A copy of that report (Navy, 2006) can be downloaded at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Authorization

NMFS has issued two LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals incidental to operating the two SURTASS LFA sonar systems for training, testing and routine military operations. Issuance of these two LOAs is based on findings, described in the preamble to the final rule (67 FR 46712, July 16, 2002) and supported by information contained in the Navy's required annual report on SURTASS LFA sonar, that the activities described under these two LOAs will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

These LOAs remain valid through August 15, 2007, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184-216.186 (67 FR 46712, July 16, 2002) and in the LOAs are undertaken.

Dated: August 15, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–13782 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081406B]

Endangered Species; Permit No. 1574

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of permit.

SUMMARY: Notice is hereby given that a scientific research permit to take shortnose sturgeon (*Acipenser brevirostrum*) has been issued to Dr. Frank A. Chapman, Department of Fisheries & Aquatic Sciences, University of Florida, 7922 NW 71st Street, Gainesville, Florida 32653.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails at (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On May 10, 2006, notice was published in the **Federal Register** (71 FR 27230) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Dr. Frank A. Chapman. Dr. Chapman will use 187 captive shortnose sturgeon presently held at the University of Florida to meet the following objectives: (1) identify physical, chemical, and biological parameters required to maintain optimal survival and growth of larvae and juvenile shortnose sturgeon; (2) describe embryonic development and metamorphosis; (3) monitor gonadal development of domestically raised shortnose sturgeon; (4) develop chemical assays to identify the sex and monitor the sexual development of shortnose sturgeon; and (5) understand the physiology of the sperm and egg to develop short and long-term storage of sperm as well as optimum fertilization techniques. The permit has been issued for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 16, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–13784 Filed 8–18–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

August 16, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for filament yarn of cellulose acetate.

SUMMARY: On July 21, 2006 the Government of the United States received a request from the Government of Mexico alleging that filament yarn of cellulose acetate, classified in heading 5403 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the Mexican industry in commercial quantities in a timely manner and requesting that the governments of Canada and the United States consult to consider whether the North American Free Trade Agreement (NAFTA) rule of origin for woven fabrics classified under HTSUS heading

5408 and products classified in HTSUS chapter 58 should be modified to allow the use of non-North American filament yarns of cellulose acetate.

The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether filament yarn of cellulose acetate of HTSUS heading 5403 can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by September 20, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the NAFTA, NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. See section 202(q) of the NAFTA Implementation Act.

On July 21, 2006 the Government of the United States received a request from the Government of Mexico alleging that filament yarn of cellulose acetate, classified in heading 5403 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the Mexican industry in commercial quantities in a timely manner and requesting that the governments of Canada and the United States consult to consider whether the NAFTA rule of origin for woven fabrics classified under HTSUS heading 5408 and products classified in HTSUS chapter 58 should be modified to allow the use of non-North American filament yarns of cellulose acetate.

CITA is soliciting public comments regarding this request, particularly with respect to whether filament yarn of cellulose acetate can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than September 20, 2006. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that filament yarn of cellulose acetate can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces filament yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 06–7077 Filed 8–17–06; 2:33 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2006–HA–0180]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 20, 2006.

ADDRESSES: You may submit comments, identified by docket number or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Following the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs (OASD), TRICARE

Operations Division, ATTN: Mr. Julius Wynn, 5111 Leesburg Pike, Suite 810(A), Falls Church, VA 22041–3206, or call TRICARE Operations Division, at 703–681–0039 ext. 3622.

Title; Associated Form; and OMB Number: TRICARE Prime Enrollment Application/PCM Change Form, DD Form 2876, and TRICARE Prime Disenrollment Application; DD Form 2877; OMB Number 0720–0008.

Needs and Uses: This information is collected in accordance with the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), section 723(b)(E). These collection instruments serve as applications for enrollment in the Primary Care Manager (PCM) Change and disenrollment from the Department of Defense's TRICARE Prime programs established in accordance with Title 10 U.S.C. 1099 (which calls for a healthcare enrollment system). Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with Title 10 U.S.C. 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change. The information collected on the TRICARE Prime disenrollment form provides the necessary data to disenroll a beneficiary from TRICARE Prime. The disenrollment application is needed to implement disenrollment from TRICARE Prime, TRICARE Prime Remote or the Uniformed Services Family Health Plan as requested by the enrollee. Failure to provide information will result in continued enrollment and beneficiaries' responsibility for payment of an enrollment fee.

Affected Public: Individuals or households.

Annual Burden Hours: 22,317.

Number of Respondents: 72,905.

Responses Per Respondent: 1.

Average Burden Per Response: TRICARE Prime Enrollment Application/PCM Change Form: 20 minutes or .33% of an hour/TRICARE Prime Disenrollment—5 minutes or .083% (average burden per response for completing both forms is 18.36 hours or .30% of an hour).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense established TRICARE Prime as a managed-care option, similar to a civilian HMO (health maintenance organization). Active duty service members are required to be enrolled in TRICARE Prime or TRICARE Prime Remote. They must take action to enroll by filling out the appropriate enrollment form and submitting it to the Managed Care Support Contractor (MCSC). TRICARE Prime is also available to other TRICARE beneficiaries who are also required to fill out the appropriate enrollment or disenrollment forms. TRICARE Prime enrollee's health care is coordinated by a primary care manager (PCM) whom could be a part of a military treatment facility, a civilian network or TRICARE Prime Remote where eligible. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Prime, TRICARE Prime Remote or change a PCM complete an enrollment application request. Completion of the enrollment form is an essential element of the TRICARE Prime program.

Dated: July 31, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7040 Filed 8–18–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2006–HA–0170]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed revision of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 20, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the TRICARE Management Activity, Attn: Lt. Col. M. Jeanne Yoder, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, or contact TRICARE Management Activity, DHP Management Control and Financial Studies Division at 703–681–3492.

Title; Associated Form; and OMB Number: Third Party Collection Program/Medical Services Account/Other Health Insurance, DD Form 2569; OMB Number 0704–0323.

Needs and Uses: The information contained in the DD Form 2569 will be used to collect reimbursement from healthcare insurers for medical care provided to dependents of Active Duty members, military retirees and their dependents, and civilians who present at a Military Treatment Facility (MTF) on an emergency basis, and anyone else who is otherwise eligible for care at the MTF. Such monetary benefits accruing to the MTF will be used to enhance healthcare delivery in the MTF. Information will also be used by MTF staff and CHAMPUS Fiscal Intermediaries to determine eligibility for care, deductibles, and co-payments and by Health Affairs for program planning and management.

Affected Public: Dependents of Active Duty members, military retirees and their dependents, civilians who present at an MTF on an emergency basis, and anyone else who is otherwise eligible for care at the MTF who have coverage from private insurance for medical care.

Annual Burden Hours: 140,361 hours.

Number of Respondents: 2,807,212.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: Annually or on occasion when insurance information changes.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The administration has placed increased emphasis upon recovery of health care expenses under the Third Party Collection Program, as authorized by Title 10, Section 1095 and 1097b of the United States Code. Completion of this form, while increasing total burden hours, will aid in increasing revenues (O&M dollars), services, and operating efficiency and effectiveness within the Military Health Services System. This information is collected either during the inpatient stay admission and/or discharge process or during the visit when a patient presents for an outpatient procedure.

Dated: August 14, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7041 Filed 8–18–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0183]

Proposed Collection; Comment Request

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Threat Reduction Agency (DTRA) announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on October 20, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the associated collection instrument, please write to the Defense Threat Reduction Agency, Office of Small Business Programs (DTRA/B), 8725 John J. Kingman Road MSC 6201, Ft. Belvoir, VA 22060–6201, or call (703) 767–7889, or e-mail *BusinessRelations@dtra.mil*.

Title and OMB Number: DTRA Industry Partner Questionnaire; OMB Control Number 0704–TBD.

Needs and Uses: This information collection instrument will allow DTRA to benchmark our contract relationships and request best practices from our industry partners via an electronic questionnaire. Further, the questionnaire will result in more constructive agendas for subsequent DTRA industry outreach conferences.

Affected Public: Business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 70.

Number of Respondents: 209.

Responses per Respondent: 1.

Average Burden per Response: .33 hours.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are small businesses, large businesses, and universities that have received DTRA contract awards greater than $100,000 since October 1, 2002, major Indefinite Delivery Indefinite Quantity (IDIQ) subcontractors, and vendors that have bid unsuccessfully on DTRA contracts greater than $100,000 since October 1, 2002. DTRA plans to utilize this survey information in subsequent business process reengineering initiatives which leverage our industry partnerships to better support the warfighter. Further, DTRA is required under the Defense Federal Acquisition Regulation Supplement (DFARS) to maintain an active industry outreach program. DTRA plans to use the survey results to develop constructive agendas for subsequent outreach conferences with our contractor community.

Dated: August 14, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7042 Filed 8–18–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: September 27, 2006.

ADDRESSES: Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: August 15, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7039 Filed 8–18–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on September 12–14, 2006 are to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: September 12, 2006 from 10:30 a.m. to 5 p.m.; September 13 from 8:30 a.m. to 5 p.m.; and September 14, 2006 from 8:30 a.m. to 2 p.m.

ADDRESSES: SERDP Program Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Misa Jensen, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: August 15, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7038 Filed 8–18–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of the Brigade Combat Team Transformation Programmatic Environmental Impact Statement (PEIS), Fort Irwin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Army Installation Management Agency and the Fort Irwin National Training Center will prepare a PEIS to analyze the impacts of mission realignment in support of the Army Transformation, the Army Campaign Plan, and other Army initiatives. Under the proposed action, the 11th Armored Cavalry Regiment will expand to become a full-size, multi-component Heavy Brigade Combat Team (BCT), deployable throughout the world. Other, smaller units will also be stationed at Fort Irwin. Training rotations will increase from 10 per year to 12. The PEIS will evaluate the new construction, new land use, and changes in training, area use necessary to implement the proposed action at Fort Irwin.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office: Major John Clearwater, Attention: IMSW–IRW–PA Fort Irwin, CA 92310; telephone: (760) 380–3078; or Directorate of Public Works: Mr. Mickey Quillman, Attention: PEIS; IMSW–IRW–PWE, Building 602, Fort Irwin, CA 92310; fax: (760) 380–2677, or e-mail *mickey.quillman@irwin.army.mil.*

SUPPLEMENTARY INFORMATION: The PEIS will assess the environmental impacts associated with the stationing and training of new soldiers at Fort Irwin. Under the proposed action, approximately 690 additional soldiers would be stationed at Fort Irwin, with approximately 760 family members accompanying them. The proposed action will increase training by about 20% on all Fort Irwin training areas and may involve some new range construction. This increased usage will ultimately involve the maneuver training areas into which Fort Irwin expanded, as decided in 2006. The proposed action will result in additional construction in the Fort Irwin cantonment area for such projects as soldier and family housing, schools, infrastructure, utilities, and related facilities. These changes would provide the capability to train additional units and represent a realignment of existing missions for the installation. The action may have environmental impacts to air quality, water usage, waste water and other utilities, and biological resources. Fort Irwin will continue to train rotational units and would now support the 11th Armored Cavalry Regiment (ACR), a multi-component Heavy BCT.

A range of reasonable alternatives, including an alternative of considering no action as required by the National Environmental Policy Act, will be developed and analyzed in the PEIS. The range of alternatives will include varying amounts of new construction and training area changes. During the scoping process, other alternatives may be developed and added for consideration. The PEIS will also analyze each alternative's impact upon the natural, cultural, and man-made environments at Fort Irwin and in the surrounding region.

Tribal, Federal, state and local agencies, as well as the public are invited to participate in the scoping process for the preparation of this PEIS. Scoping meetings will be held in convenient locations near the installation. Notification of the times and locations for the scoping meetings will be published in local newspapers. The scoping process will help identify additional possible alternatives, potential environmental impacts, and key issues of concern to be analyzed in the PEIS. To ensure scoping comments are fully considered in the Draft PEIS, comments and suggestions should be received within the 30-day scoping period or no later than 15 days following the last scoping meeting, whichever is later.

Dated: August 8, 2006.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 06–7054 Filed 8–18–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for the Berth 97–109 Container Terminal Project, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Branch), in coordination with the Port of Los Angeles, has completed a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berth 97–109 Container Terminal Project. The Port of Los Angeles requires authorization pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for wharf and terminal development (142 acres) in three phases, dredging up to 41,000 cubic yards of sediment, construction of two new concrete pile-supported wharves (for a total of 2,500 feet), new terminal buildings and two new terminal bridges.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Draft EIS/EIR should be directed to Dr. Aaron O. Allen, Senior Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA 90053–2325, (805) 585–2148.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Branch, Los Angeles District.

[FR Doc. E6–13755 Filed 8–18–06; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 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: August 15, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Reading First Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 990.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

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 3132. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–13746 Filed 8–18–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Wednesday, September 13, 2006.

Time: 9 a.m.–2 p.m.

ADDRESSES: The Board will meet at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey, NW., Washington, DC 20001, Phone: 202–737–1234, Fax: 202–737–5773.

FOR FURTHER INFORMATION CONTACT: Charles M. Greene, Executive Director, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7511, fax: 202–502–7852.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002 and Executive Order 13316 dated September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role in strengthening these institutions, with particular emphasis given to enhancing institutional planning and development; strengthening fiscal stability and financial management; and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda

The purpose of the meeting is to receive and deliberate on policy issues pertinent to the Board and the nation's HBCUs and to discuss relevant issues to be addressed in the Board's annual report.

Additional Information

Individuals who will need accommodations for a disability in order

to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Friday, September 1, 2006. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, September 13, 2006, between 1:30 p.m.–2 p.m. Those members of the public interested in submitting written comments may do so by submitting it to the attention of Charles M. Greene, 1990 K Street, NW., Washington, DC, by Friday, September 1, 2006.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Dated: August 13, 2006.

Jim Manning,

Acting Assistant Secretary, Office of Post Secondary Education, U.S. Department of Education.

[FR Doc. 06–7037 Filed 8–18–06; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of Draft Strategic Plan and Request for Public Comment

AGENCY: Office of the Chief Financial Officer, Department of Energy.

ACTION: Notice of availability of DOE Draft Strategic Plan and request for comment.

SUMMARY: This notice announces the availability of the Department of Energy's draft Strategic Plan. The Government Performance and Results Act of 1993 requires that Federal agencies update their strategic plans every three years and, in doing so, solicit the views and suggestions of those entities potentially affected by or interested in the plan. Therefore, the Department is interested in receiving comments on our draft Strategic Plan.

DATES: Comments are due by September 7, 2006. If comments are received late, we will consider them to the extent practicable.

ADDRESSES: To access the draft strategic plan, go to *http://www.energy.gov,* on the left side of the Department's homepage under ''Quick Reference'' select the ''Strategic Plan—Public Comment'' icon. You can provide your comments on-line through the Web site or by e-mail to *StrategicPlan@hq.doe.gov*. If you wish to send written comments or have any questions, please direct them to: David Abercrombie, U.S. Department of Energy, Office of Program Analysis and Evaluation, CF–20, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: David Abercrombie (202) 586–8664.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act requires that each Federal agency update their strategic plan every three years, (5 U.S.C. 306), and submit their plan to the Congress. This draft Strategic Plan describes our mission, strategic goals, and strategies to achieve those goals.

Public Participation Policy

It is the policy of the Department to ensure that public participation is an integral and effective part of DOE activities and that decisions are made with the benefit of significant public perspectives. The Department recognizes the many benefits to be derived from public participation for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum possible, enabling the Department to make more informed decisions. Likewise, public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation.

We anticipate publishing the final Strategic Plan on September 30, 2006 and making it available on the Internet at that time.

Issued in Washington, DC, on August 15, 2006.

James T. Campbell,

Acting Chief Financial Officer.

[FR Doc. E6–13735 Filed 8–18–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

August 4, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–145–000; ER06–1307–000.

Applicants: Rockingham Power, L.L.C.; Duke Power Company LLC; Dynegy Power Marketing, Inc.

Description: Rockingham Power, LLC et al submit an application for authorization of disposition of jurisdictional assets pursuant to Section 203 and a notice of termination of rate schedules.

Filed Date: 7/28/2006.

Accession Number: 20060803–0005.

Comment Date: 5 p.m. Eastern Time on Friday, August 18, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–67–000.

Applicants: Snowflake White Mountain Power, LLC.

Description: Snowflake White Mountain Power, LLC submits its notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 7/31/2006.

Accession Number: 20060804–0089.

Comment Date: 5 p.m. Eastern Time on Monday, August 21, 2006.

Docket Numbers: EG06–68–000.

Applicants: CalPeak Power LLC.

Description: CalPeak Power LLC submits its Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/2/2006.

Accession Number: 20060804–0096.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 23, 2006.

Take notice that the Commission received the following electric rate filings

Docket Numbers: ER96–2504–015; ER05–1367–004; ER05–1368–004; E05–1369–006; ER00–826–007; ER00–828–007; ER98–421–018; ER98–4055–015; ER01–1337–010; ER02–177–011; ER03–1212–009; ER96–110–021; ER99–2774–014; ER03–956–010; ER03–185–008; ER03–17–008; ER01–545–010; ER00–1783–010; ER02–795–008.

Applicants: Cinergy Gas & Electric Company; PSI Energy, Inc.; Union Light Heat & Power Company; Cinergy Marketing & Trading, LP; Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC; Cinergy Operating Companies; Duke Power Company LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Marketing America, LLC; Duke Energy Fayette, LLC; Duke Energy Hanging Rock, LLC; Duke Energy Lee, LLC; Duke Energy Vermillion, LLC; Duke Energy Washington, LLC.

Description: Duke Energy Corporation on behalf of The MBR Companies submit a notice of a non-material change in status in respect to their

authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates.

Filed Date: 7/28/2006.

Accession Number: 20060803–0001.

Comment Date: 5 p.m. Eastern Time on Friday, August 18, 2006.

Docket Numbers: ER99–1293–007.

Applicants: Monmouth Energy, Inc.

Description: Compliance Filing of FERC's Order Issued 6/30/2006 of Monmouth Energy, Inc.

Filed Date: 7/28/2006.

Accession Number: 20060728–5102.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER00–2268–019; ER99–4124–016; ER00–3312–017; ER99–4122–018.

Applicants: Pinnacle West Capital Corporation; Arizona Public Service Company; Pinnacle West Energy Company; APS Energy Services Company, Inc.

Description: Pinnacle West Capital Corp. et al., submits a supplemental compliance filing in response to the Commission's 4/17/06 Order.

Filed Date: 7/31/2006.

Accession Number: 20060728–5110.

Comment Date: 5 p.m. Eastern Time on Monday, August 21, 2006.

Docket Numbers: ER01–48–007.

Applicants: Powerex Corp.

Description: Powerex Corp submits its 2006 triennial market power analysis in support of its continued authority to sell power at market-based rates.

Filed Date: 7/31/2006.

Accession Number: 20060802–0150.

Comment Date: 5 p.m. Eastern Time on Monday, August 21, 2006.

Docket Numbers: ER06–1270–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: Central Hudson Gas & Electric Corporation submits revised FERC Rate Schedule 202, Sixth Revised Sheet Nos. 9–12.

Filed Date: 7/21/2006.

Accession Number: 20060725–0059.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER06–1306–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits two Large Facility Agreements and fifteen Small Facility Agreements with the City and County of San Francisco designated as Revised Rate Schedule FERC 114.

Filed Date: 7/31/2006.

Accession Number: 20060802–0009.

Comment Date: 5 p.m. Eastern Time on Monday, August 21, 2006.

Docket Numbers: ER06–1319–000.

Applicants: Northern States Power Company (Wisconsin).

Description: Northern States Power Co submits changes in rates, rate design and terms and conditions applicable to service to ten wholesale electric customers, the Village of Bangor, WI et al, effective 10/1/06.

Filed Date: 7/31/2006.

Accession Number: 20060802–0049.

Comment Date: 5 p.m. Eastern Time on Monday, August 21, 2006.

Docket Numbers: ER06–1320–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits its 2006 Test Year Wholesale Rate Adjustment for certain customers to take effect 1/1/07 or 5/1/07.

Filed Date: 8/1/2006.

Accession Number: 20060803–0074.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1321–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Seventh Revised Sheet 11 of Second Revised FERC Rate Schedule 300, Agreement w/ Missouri Joint Municipal Electric Utility.

Filed Date: 8/1/2006.

Accession Number: 20060802–0155.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1331–000.

Applicants: CalPeak Power LLC.

Description: Calpeak Power, LLC submits an application for acceptance of their proposed FERC Electric Tariff, Original Volume 1 under ER06–1331.

Filed Date: 8/2/2006.

Accession Number: 20060804–0095.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 23, 2006.

Docket Numbers: ER06–1322–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Sixth Revised Sheet 11 to Rate Schedule 303, Agreement w/ Missouri Joint Municipal Electric Utility Commission.

Filed Date: 8/1/2006.

Accession Number: 20060802–0156.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1323–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits its Sixth Revised Sheet 9 to Rate Schedule 302, Agreement w/Missouri Joint Municipal Electric Utility Commission.

Filed Date: 8/1/2006.

Accession Number: 20060802–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1324–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits counterpart signature pages of the NEPOOL Agreement dated 9/1/71 with Caithness New England Services Co., LLC, et al.

Filed Date: 8/1/2006.

Accession Number: 20060802–0151.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1327–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits the Original Service Agreement No. 244 for Long-Term Firm Point-to-Point Transmission Service w/ the City of Homestead, Florida.

Filed Date: 8/1/2006.

Accession Number: 20060802–0159.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1328–000.

Applicants: Central Illinois Public Service Company; Union Electric Company; Ameren Energy Generating Company.

Description: Ameren Parties submits its Third Amendment to the Joint Dispatch Agreement, effective 9/29/06, which changes the termination provision of the agreement.

Filed Date: 8/1/2006.

Accession Number: 20060802–0157.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1329–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits notice of cancellations of Service Agreement No 6 et al, to be made effective 10/1/06.

Filed Date: 8/1/2006.

Accession Number: 20060803–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 22, 2006.

Docket Numbers: ER06–1332–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Co submits the revised rate sheets for the two Reliability Must-Run Service Agreements with California Independent System Operator Corporation.

Filed Date: 7/11/2006.

Accession Number: 20060713–0033.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It

is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13732 Filed 8–18–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8211–5]

Notification of a Public Meeting of the Science Advisory Board Environmental Economics Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Environmental Economics Advisory Committee (EEAC) to discuss the valuation of mortality risk reduction.

DATES: The meeting will be held from 9 a.m.–5 p.m. (EST) on September 14, 2006 and from 9 a.m.–2 p.m. (EST) on September 15, 2006.

ADDRESSES: The meeting will be held at the SAB Conference Center located at 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office by telephone/voice mail at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab.* The technical contact for EPA's work on valuing mortality risk reduction is Dr. Chris Dockins who may be reached at (202) 566–2286 or *dockins.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Environmental Economics Advisory Committee will hold a public meeting to discuss appropriate methods for valuing mortality risks in the context of cost-benefit analysis. The EEAC will be augmented by economists from the chartered Science Advisory Board as well as the Advisory Council on Clean Air Compliance Analysis. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The U.S. Environmental Protection Agency (EPA) uses a value of statistical life (VSL) to express the benefits of mortality risk reductions in monetary terms for use in benefit cost analyses of its rules and regulations. EPA has used the same central default value (adjusted for inflation) in its primary analyses since 1999 when the Agency updated its *Guidelines for Preparing Economic Analyses* (2000). Prior to the release of the Guidelines, EPA sought advice from the Science Advisory Board's Environmental Economics Advisory Committee (SAB–EEAC) on the appropriateness of this estimate and its derivation. In 2000, EPA also consulted with the SAB–EEAC on the appropriateness of making adjustments to VSL estimates to capture risk and population characteristics associated with fatal cancer risks. On May 12–13, 2004, the Environmental Economics Advisory Committee held a consultation to discuss the robustness of estimates from the mortality risk valuation literature.

EPA is now in the process of revising and updating its Guidelines and as such would like additional guidance on its approach to valuing mortality risk reductions. The EEAC has been asked to review two papers related to this topic. The first paper (posted at *http://yosemite.epa.gov/EE/epa/eerm.nsf/vwRepNumLookup/EE–0494?OpenDocument)* addresses the application of meta analysis techniques to the derivation of estimates for mortality risk reduction. A second paper discusses appropriate and available methods for valuing mortality risk reductions when affected populations have varying life expectancies. This paper will be posted at *http://yosemite.epa.gov/EE/epa/eerm.nsf/vwRepNumLookup/EE–0495?OpenDocument.*

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, at the contact information noted above, by August 31, 2006, to be placed on the public speaker list for the September 14–15, 2006 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by August 31, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements

should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Access: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov.* To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: August 11, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–13744 Filed 8–18–06; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Information Collection; National Contact Center Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Consumer Information Center, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the National Contact Center Customer Evaluation Survey. This OMB clearance expires on September 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Federal Information Specialist, Office of Citizen Services and Communications, at telephone (202) 501–1803 or via e-mail to *tonya.beres@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Hillary Jaffe, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the National Contact Center service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 2,200.

Responses Per Respondent: 1.

Hours Per Response: .05 (3 minutes) for phone survey

.06 (4 minutes) for e-mail survey.

Total Burden Hours: 119

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

Dated: July 7, 2006.

Daryle M. Seckar,

Director, Office of Enterprise Infrastructure Operations.

[FR Doc. E6–13750 Filed 8–18–06; 8:45 am]

BILLING CODE 6820–CX–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health Emergency Preparedness (OPHEP); Office of Public Health Emergency Medical Countermeasures (OPHEMC)

AGENCY: Office of Public Health Emergency Preparedness (OPHEP)/ Office of Public Health Emergency Medical Countermeasures (OPHEMC), HHS.

ACTION: Notice of meeting.

SUMMARY: The Department of Health and Human Services is pleased to announce the BioShield Stakeholders Workshop. The BioShield Stakeholders Workshop is being convened to provide individual stakeholders with an opportunity to gain insight into the current BioShield interagency governance process and to provide input into the draft HHS *Public Health Emergency Medical Countermeasures (PHEMC) Strategy for Chemical, Biological, Radiological, and Nuclear (CBRN) Threats.*

DATES: The Workshop will be held on September 25–26, 2006. Pre-registration is available via the Web site shown below. On-site registration will also be possible, space permitting. On-site registration, if offered, will begin at 8 a.m. on September 25. The meeting will begin at 8:30 a.m. and will end at approximately 6 p.m. on both days.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202. The Crystal Gateway Marriott is located directly above the Crystal City Metro Station on the yellow and blue Metro lines.

Register: Please visit *http://www.hhs.gov/ophep/ophemc/* to register online. The deadline for online registration is Monday, September 18, 2006. On-site registration will also be available at the meeting, space permitting. Seating is limited, so register today!

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services is pleased to announce the upcoming HHS BioShield Stakeholders Workshop. The goals of the HHS BioShield Stakeholders Workshop are:

1. To provide its attendees with insight into the current BioShield interagency governance process; and

2. To provide individual stakeholders with an opportunity to help guide the future implementation of Project BioShield by providing input into the draft HHS *Public Health Emergency Medical Countermeasures (PHEMC) Strategy for Chemical, Biological, Radiological, and Nuclear (CBRN) Threats.*

The draft *PHEMC Strategy for CBRN Threats* is being developed under the leadership of the Office of Public Health Emergency Medical Countermeasures (OPHEMC) within the Office of Public Health Emergency Preparedness (OPHEP), U.S. Department of Health and Human Services, and will be published in the **Federal Register** prior

to this workshop. This Strategy will define the principles guiding HHS medical countermeasure research, development and acquisition.

The BioShield Stakeholders Workshop will be an open meeting for representatives from the pharmaceutical and biotechnology industries, professional societies, State and local public health organizations, the academic research and development community, public interest groups, stakeholder Federal agencies, and Congress.

The BioShield Stakeholders Workshop is being convened, and the PHEMC Strategy for CBRN Threats is being developed and published, to fulfill the promise that Health and Human Services Secretary Michael O. Leavitt made on March 16, 2006, in his testimony before the Senate Committee on Health, Education, Labor, and Pensions. During his testimony, Secretary Leavitt pledged to:

> work closely with other departments and agencies to streamline and make more effective the current BioShield interagency governance process. We will make this process more transparent and work to educate the public and industry about our priorities and opportunities. As part of this, HHS will convene an outreach meeting with these external stakeholders later this year.

OPHEP leads Federal efforts to prepare the nation to prevent and mitigate the health effects of disasters, natural or manmade. As part of this important mission, OPHEMC, within OPHEP, plays a leadership role in the advanced development and acquisition of medical countermeasures, including implementation of the Project BioShield Act of 2004.

The purpose of Project BioShield is to accelerate the research, development, acquisition, and availability of effective medical countermeasures for chemical, biological, radiological, and nuclear (CBRN) threats. The Special Reserve Fund (SRF), a discretionary reserve of $5.6 billion for the advanced development and purchase of priority medical countermeasures over 10 years, was authorized under Project BioShield to support this mission.

For more information regarding the BioShield Stakeholders Workshop, and to register for the Workshop, please visit *http://www.hhs.gov/ophep/ophemc/.*

Dated: August 15, 2006.

Carol Linden,

Deputy Director, OPHEMC.

[FR Doc. 06–7033 Filed 8–18–06; 8:45 am]

BILLING CODE 4150–31–M

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 of proposed information collection.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project ''Continuance of the Medical Expenditure Panel Survey—Household and Medical Provider Component through 2009.'' 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 collection.

This proposed information collection was previously published in the **Federal Register** on June 2, 2006 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by September 20, 2006.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, AHRQ, Reports Clearance Officer, 540 Gaither Road, Suite 5036, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments and specific details of the estimated burden can be obtained from the AHRQ Reports Clearance Officer, (301) 427–1477.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Continuance of the Medical Expenditure Panel Survey—Household and Medical Provider Component through 2009.''

AHRQ has conducted an annual panel survey of U.S. households and their associated medical providers since 1996 through the Medical Expenditures Panel Survey (MEPS)–Household (MEPS–HC) and Medical Provider Component (MEPS–MPC). This clearance requests continuance of this annual survey through 2009. The MEPS is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS). The MEPS is conducted using a sample of households that responded to a prior year's National Health Interview Survey (NHIS) which is sponsored by the NCHS. The NHIS surveys approximately 40,000 households (110,000 persons) each year.

The NHIS is used as a sampling frame for the MEPS and other surveys to increase efficiency of data collection efforts within the Department of Health and Human Services.

Data to be collected from each household is completed through the MEPS–HC and includes detailed information on demographics, health conditions, health status, use of health care services, charges and payments for medical care, medications, and employment and health insurance. Data to be collected from medical providers including hospitals, physicians, and pharmacies is completed through the MEPS–MPC which supplements and verifies information provided by the households. With the written permission of household members of the MEPS–HC, the MEPS–MPC collects actual dates of services, diagnosis and service codes, as well as charges and payments for services. Subject to AHRQ NCHS confidentiality statutes, data will be made available through Agency publications, journals, public use files and Web-based statistical tools. The data are intended for multiple purposes including:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, cost and scope of private health benefits among Americans.
- Examining the quality of care for Americans, especially those with chronic conditions.
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescribed medications and other health issues.

Statisticians and researchers will use these data to make important generalizations about the civilian non-institutionalized population of the United States and to conduct research in which the family is the unit of analysis.

Data Confidentiality

The confidentiality of MEPS data is protected under the NCHS and AHRQ confidentiality statutes, found in sections 934(c) and 308(d) of the Public Health Service Act (42 U.S.C. 299c–3(c) and 42 U.S.C. 242m).

Methods of Collection

AHRQ introduces the study to respondents of the Household Component through an advance mailing. This first contact will provide the respondent with information on the importance and uses of the data. Once consent for participation is established, AHRQ, through its contractors will conduct five, in person, interviews over a 30-month time period with each participating household to obtain information to support two years of national estimates. Computer-assisted personal interviewing will be used. In uncommon instances, the identical interview may be administered over the phone. Respondents may also be asked to complete one or more short, self-administered questionnaires over the course of the study.

The Medical Provider Component is completed predominately by telephone and mail. A substantial portion of the pharmacy providers elect to submit their responses electronically.

MEPS–HC Annual Data Collection Estimated Burden

Activity	Unit	Number of responses	House per response	Burden in hours
Jan–July				
07 panel interview	Households	7,900	2.0	15,800
06 panel interview	Households	7,650	1.5	11,475
06 panel DCS	Persons 18+ with diabetes	800	0.1	80
05 panel interview	Households	7,400	1.5	11,100
05 panel DCS	Persons 18+ with diabetes	750	0.1	75
Re-interview	responses	2,065	0.1	207
Aug–Dec				
07 Panel interview	Households	7,700	1.5	11,550
07 Panel SAQ	Persons 18+	6,950 × 1.8	0.2	2,502
06 panel interview	Households	7,550	1.5	11,325
06 Panel SAQ	Persons 18+	6,800 × 1.8	0.2	2,448
Reinterview	responses	1,373	0.1	138
Total				66,700

MEPS–MPC Annual Data Collection Estimated Burden—Pair Level Calculation

Type	Number of patient/provider pairs	Events per pair	Total events	Response time/event (minutes)	Burden in hours
Hospitals	10,500	3.2	33,600	5	2800
HMO	450	5.0	2250	5	187
SBD	15,500	1.4	21,700	3	1085
Home health	440	5.8	2552	5	212
OBDS	23,210	3.5	81,235	5	6770
Pharmacy	14,410	10.3	148,423	3	7421
Institutions	100	1.2	120	5	10
					18,485

MEPS Summary Data Collection Burden 2007–2009

Unit type	2007	2008	2009	Total
Households	66,700	66,700	66,700	200,100
Medical provider	18,485	18,485	18,485	55,455
Total	85,185	85,185	85,185	255,555

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 functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information 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 records.

Dated: August 14, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–7068 Filed 8–17–06; 9:08 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06–06BN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Conduct a Chronic Fatigue Syndrome Registry Pilot Test (Bibb County, Georgia)—New—National Center for Infectious Diseases (NCID) Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is tasked with establishing a registry of chronic fatigue syndrome (CFS) and other fatiguing illnesses. The objective of the registry is to identify persons with unexplained fatiguing illnesses, including CFS, who access the healthcare system because of their symptoms. Patients will be between the ages of 12 and 59, inclusive.

Specific aims of the registry are: (1) Identify and enroll patients with CFS and other unexplained fatiguing illnesses who are receiving medical and ancillary medical care and describe their epidemiologic and clinical characteristics; (2) follow CFS patients and patients with other fatiguing illnesses over time to characterize the natural history of CFS and other unexplained fatiguing illnesses; (3) assess and monitor health care providers' knowledge, attitudes, and beliefs concerning CFS; (4) and to identify well-characterized CFS patients for clinical studies and intervention trials. These specific aims require inclusion of subjects in early stages of CFS (*i.e.*, ill less than one year duration) who can be followed longitudinally to assess changes in their CFS symptoms. Data on persons with CFS in the general population has been collected in a separate study and is not an objective of this Registry.

In order to determine the most effective and cost-efficient design for achieving the objective and specific aims, CDC will conduct a pilot test of the Registry of CFS and other fatiguing illnesses in Bibb County, Georgia. The CFS Registry Pilot Test will assess two Registry designs for efficacy and efficiency in identifying adult and adolescent subjects with CFS who are receiving medical and ancillary medical care. Specifically, the CFS Registry Pilot Test will evaluate surveillance of patients with CFS identified through physician practices and a surveillance of CFS patients identified by physicians and other health care providers.

The proposed study will begin when a provider refers a patient to the registry. Patients who consent to be contacted for the registry will be asked to complete a detailed telephone interview that screens for medical and psychiatric eligibility. Eligible subjects will be invited to have a clinical evaluation that comprises a physical examination; collection of blood, urine, and saliva specimens; a mental health interview; and self-administered questionnaires.

There is no cost to respondents other than their time. Patients who are clinically evaluated will be reimbursed for their time and effort. The total annualized burden hours are 2,557.

Estimate of Annualized Burden Hours

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Referring Providers	400	2	5/60	67
Patient consent to be contacted	677	1	10/60	113
Patient Telephone Interview	541	1	30/60	271
Patient Clinical Evaluation	234	1	540/60	2,106
Total Burden				2,557

Dated: August 15, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–13721 Filed 8–18–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Labor Market Survey.

OMB No.: New Collection.

Description: Understanding the motivations, hiring practices, and work place policies of employers—the demand side of the labor market—can provide considerable information to policy makers interested in promoting work and advancement among welfare recipients and other less-skilled workers. This project will add to our knowledge in this area by surveying employers in the TANF/low-wage labor market. We will survey a national sample of employers, focusing on industry sectors with the most jobs in the low-wage labor market, the employers most relevant for the majority

of current and recent TANF recipients. The survey will gather information from employers on their attitudes, practices, and policies toward TANF recipient and other low-skill hires, including information on worker advancement, the use of work force intermediaries in hiring, and the role that child care plays in worker retention. The survey will allow for comparisons of employers in urban-core areas, suburbs, and exurbs/rural areas. It will also measure employment outcomes for TANF recipients and other low-skilled workers, allowing us to draw connections between employer practices and employee outcomes. In short, this national survey of employers in the low-wage labor market can provide key information on what employer practices and policies are and how they are associated with workplace success for welfare recipients and other less-skilled workers.

Respondents: A nationally representative sample of business establishments having 4 or more workers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Labor Market Survey	1,300	1	0.33	429

Estimated Total Annual Burden Hours: 429.

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: *Katherine_T._Astrich@omb.eop.gov.*

Dated: August 15, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–7036 Filed 8–18–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0320]

Molecular Methods in Immunohematology; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Molecular Methods in Immunohematology.'' The purpose of the public workshop is to gather and review current information on scientific developments that might enhance immunohematologic testing of blood donor or patient blood samples as part of pre-transfusion compatibility testing, or in determination and management of feto-maternal blood group incompatibilities.

Date and Time: The public workshop will be held on September 25, 2006, from 8:30 a.m. to 5 p.m., and September 26, 2006, from 8:30 a.m. to 2 p.m.

Location: The public workshop will be held at the Lister Hill Center Auditorium, bldg. 38A, National Institutes of Health, 8800 Rockville Pike, Bethesda, MD 20894.

Contact Person: Rhonda Dawson, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *rhonda.dawson@fda.hhs.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by September 15, 2006. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 8:00 a.m.

If you need special accommodations due to a disability, please contact Rhonda Dawson (see *Contact Person*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The public workshop will feature presentations by national and international experts from government, academic institutions, and industry. The main goal of the workshop is to determine potential applications of molecular methods to improve safety in transfusion medicine by overcoming current limitations in the field of immunohematology, namely, the lack of reagent grade antibodies, both polyclonal and monoclonal; variability of reactivity of monoclonal antibodies as compared to polyclonal antibodies; and inherent limitations in the hemagglutination test. Topics to be discussed include the following: (1) Use of molecular methods in platelet and leukocyte typing, (2) use of phage display technology in place of routine hemagglutination tests, (3) potential advantages of using molecular methods in donor screening and patient typing, (4) use of molecular methods to resolve unusual serologic findings, (5) potential use of molecular methods in the manufacture of immunohematology reagents, and (6) current limitations in the use of molecular methods.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: August 14, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13695 Filed 8–18–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2006

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2006 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Public Law 106–554, section 432, dated December 21, 2000, authorized IHS facilities to file Medicare Part B claims with the carrier for payment for physician and certain other practitioner services provided on or after July 1, 2001.

	Calendar year 2006
Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services):	
Lower 48 States	$1,660
Alaska	2,131
Outpatient Per Visit Rate (Excluding Medicare):	
Lower 48 States	242
Alaska	406
Outpatient Per Visit Rate (Medicare):	
Lower 48 States	193
Alaska	348
Medicare Part B Inpatient Ancillary Per Diem Rate:	
Lower 48 States	340
Alaska	625

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2006 Rates

Consistent with previous annual rate revisions, the Calendar Year 2006 rates will be effective for services provided on/or after January 1, 2006 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: June 27, 2006.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. E6–13785 Filed 8–18–06; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG's Guidelines for Evaluating State False Claims Acts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: Under section 1909 of the Social Security Act (the Act), 42 U.S.C. 1396h, the Inspector General of the Department of Health and Human Services is required to determine, in consultation with the Attorney General, whether a State has in effect a law relating to false or fraudulent claims submitted to a State Medicaid program that meets certain enumerated requirements. If the Inspector General determines that a State law meets these requirements, the State medical assistance percentage, with respect to any amounts recovered under a State action brought under such a law, shall be increased by 10 percentage points. This notice sets forth the Inspector General's guidelines for evaluating whether a State law meets the requirements of section 1909 of the Act.

DATES: *Effective Date:* These guidelines are effective on August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Roderick T. Chen, Office of Counsel to the Inspector General, (202) 401–4134, or Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1909 of the Act, added by section 6031 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), creates a financial incentive for States to enact legislation that establishes liability to the State for individuals or entities that submit false or fraudulent claims to the State Medicaid program. This incentive takes the form of an increase in the State's share of any amounts recovered from a State action brought under a qualifying law.[1] In order for a State to qualify for this incentive, the State law must meet certain enumerated requirements, as determined by the Inspector General of the Department of Health and Human Services in consultation with the Attorney General.

Medicaid, authorized under Title XIX of the Act, 42 U.S.C. 1396–1396v, is a joint Federal and State program that pays for medical and other related benefits provided to needy beneficiaries. States that participate in Medicaid administer their own programs within broad Federal guidelines and receive matching funds from the Federal government. The Federal share generally varies between 50 percent and 83 percent, depending on the State per capita income.

False or fraudulent claims presented to State Medicaid programs by participating providers and others may give rise to civil liability under the Federal False Claims Act (FCA), 31 U.S.C. 3729–3733. Under the FCA, any person who knowingly submits a false or fraudulent claim to a State Medicaid program is liable to the Federal Government for three times the amount of the Federal Government's damages plus penalties of $5,000 to $10,000 for each false or fraudulent claim. Any recovery of damages to the State Medicaid program will be shared with the State in the same proportion as the State's share of the costs of the Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would be entitled to receive 40 percent of the damages and the Federal Government would retain 60 percent of the damages.

Under the *qui tam* provisions of the FCA, private persons (known as relators) may file lawsuits in Federal court against individuals and/or entities that defraud the Federal government by filing false or fraudulent Medicaid claims. The Department of Justice (DOJ) has an opportunity to investigate the relator's allegations, and DOJ may intervene and take over the prosecution of the action. If DOJ chooses not to intervene, the relator has the right to conduct the action. In general, with respect to recoveries of Federal damages and penalties in cases in which DOJ has intervened, the relator is entitled to between 15 and 25 percent of the recovery of Federal damages and penalties depending upon the extent to which the relator substantially contributed to the case. In general, the relator is entitled to between 25 and 30

[1] The increase results from a 10-percentage point decrease in the Federal share of any recovery from a State action brought under a qualifying law.

percent of any recoveries of Federal damages and penalties if DOJ has not intervened in the case. Because the FCA applies only to false claims against the Federal Government, the relator is not entitled to a share of the State portion of a Medicaid recovery under the FCA.

Many States have enacted their own false claims acts that establish civil liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. Generally, these laws include *qui tam* provisions that reward relators with a share of the State portion of recoveries in cases of Medicaid fraud. Currently, if a State obtains a recovery as the result of a State action relating to false or fraudulent claims submitted to its Medicaid program, it must share the damages recovered with the Federal Government in the same proportion as the Federal Government's share in the cost of the State Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would retain 40 percent of any damages recovered from an individual or entity that has defrauded Medicaid, and the Federal Government would be entitled to the remaining 60 percent of damages.

II. Section 1909 of the Social Security Act

In order to encourage States to pursue Medicaid fraud, Congress added a new section 1909 to the Act, effective January 1, 2007. Under this section, if a State has in effect a State false claims act that meets certain enumerated requirements, the Federal medical assistance percentage will be decreased by 10 percentage points with respect to any amount recovered under a State action brought under such a law. Therefore, the State's share of any recovery in an action under such a law will be increased by 10 percentage points. For example, if a State has a qualifying State false claims act and the State's Medicaid share is 50 percent, the State would be entitled to 60 percent of the amount of the recovery, while the Federal Government would receive the remaining 40 percent.

Section 1909(b) of the Act requires the Inspector General to determine, in consultation with the Attorney General, whether a State has in effect a false claims act that meets the following requirements:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act;

2. The law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732;

3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General; and

4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be considered in compliance with such requirements so long as the law continues to meet such requirements.

The effective date of section 1909 of the Act is January 1, 2007. Thus, a State with a law in effect that meets the enumerated requirements will qualify for a 10 percentage point increase in its share of any amounts recovered from a State action brought under the law if the recovery is received on or after January 1, 2007. A State may enact a law before, on, or after January 1, 2007. Furthermore, the action that gives rise to the recovery may be commenced before, on, or after January 1, 2007. As long as the State's law meets the enumerated requirements on or after January 1, 2007, and the recovery from the action brought under the qualifying law is received by the State on or after January 1, 2007, the State will qualify for a 10 percent increase in its share of the amount recovered.

It is important to note that section 1909 of the Act does not require a State to have in effect a false claims act or to enact a false claims act that meets these minimum requirements. States may choose not to enact false claims acts, or may choose to enact false claims acts that do not meet the enumerated requirements. However, a State that does not have such a law in effect will not qualify for the 10 percentage point increase in its share of any recoveries from an action brought under such a law.

III. OIG Guidelines for Evaluating State False Claims Acts

Section 1909(b) of the Act sets forth four requirements that a State law must meet if the State is to qualify for the 10 percentage point increase in any State Medicaid share recovered under the law. The Inspector General is required to determine, in consultation with the Attorney General, whether a State law meets these requirements. After reviewing section 1909 of the Act and consulting with DOJ, OIG has developed guidelines to use in evaluating whether a State law meets the enumerated requirements. It is important to note that these guidelines are not model statutory provisions. OIG is not requiring any specific language to be included in State false claims acts. Rather, the guidelines reflect the provisions relevant to OIG's review of whether a State law meets the requirements of section 1909(b) of the Act.

A. Liability for False or Fraudulent Claims

Under section 1909(b)(1) of the Act, the State law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729, with respect to any expenditure described in section 1903(a) of the Act. Section 1903(a) of the Act describes expenditures related to State Medicaid plans, including all expenditures for medical assistance under a State Medicaid plan. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(1) of the Act, OIG will consider whether the law provides for the following:

1. Liability to the State for false or fraudulent claims with respect to Medicaid program expenditures, including:

- Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program;
- Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program;
- Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid;
- Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

2. Definitions for the terms ''knowing'' and ''knowingly'' meaning that a person, with respect to information: (a) Has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information. In addition, no proof of specific intent to defraud should be required.

B. Qui Tam Provisions

Under section 1909(b)(2) of the Act, a State law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(2) of the Act, OIG will consider

whether the law provides for the following:

1. A provision that authorizes a person (relator) to bring a civil action for a violation of the State false claims act for the person and for the State, which will be brought in the name of the State.

2. A provision that requires a copy of complaint and written disclosure of material evidence and information to be served on the State Attorney General in accordance with State Rules of Civil Procedure.

3. A provision that provides that when a relator brings a qui tam action, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

4. Provisions that set forth rights of parties to *qui tam* actions, including:

- If the State proceeds with the action, the State has primary responsibility in the action, but the relator shall have the right to continue as a party to the action; and
- If the State elects not to proceed with the action, the relator may conduct the action but the State may intervene at a later date upon a showing of good cause.

5. Provisions that reward a relator with a share of the proceeds of the action or settlement of the claim, including:

- If the State proceeds with an action brought by the *qui tam* relator, the relator receives at least 15 percent of the proceeds of the action or settlement of the claim, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action;
- If the State does not proceed with an action, the relator receives at least 25 percent of the proceeds of the action or settlement, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action; and
- The court is authorized to award the relator an amount for reasonable expenses, including attorneys' fees and costs, to be awarded against the defendant.

6. A statute of limitations period not shorter than 6 years after the date of the violation is committed, or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with the responsibility to act in the circumstances, whichever occurs last.

7. A provision that establishes the burden of proof, for each of the elements of the cause of action including damages, no greater than a preponderance of the evidence.

8. A provision that provides a cause of action for relators who suffer retribution from employers for whistleblower activities related to the State false claims act.

OIG is required to consider whether the State law is at least as effective in rewarding and facilitating *qui tam* actions when compared to the provisions at 31 U.S.C. 3730–3732. State false claims acts may include procedural rights, reductions in relator awards, jurisdictional bars, and other qui tam provisions similar to those found in the FCA that do not conflict with the requirements of section 1909(b)(2) of the Act. However, if such provisions are more restrictive than the provisions in the FCA, OIG may determine that a State law is not as effective in rewarding or facilitating *qui tam* actions. OIG will make such determinations on a case-by-case basis and in consultation with DOJ.

C. Seal Provisions

Under section 1909(b)(3) of the Act, a State law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. When evaluating whether a State law meets the requirements of section 1909(b)(3) of the Act, OIG will consider whether the law provides a provision that requires the complaint to be filed in camera and to remain under seal for at least 60 days. In addition, OIG will consider whether the State law's seal provisions operate in a way that conflict with the Federal seal in a pendant FCA case.

D. Civil Penalty Provisions

Under section 1909(b)(4) of the Act, the State law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729. OIG will review a State law to determine if these provisions include a provision that sets at least treble damages (or double damages in instances of timely self-disclosure and full cooperation) and civil penalties at amounts of at least $5,000 to $10,000 per false claim.[2]

IV. OIG Procedures for Reviewing State False Claims Acts

As noted above, the effective date of section 1909 of the Act is January 1, 2007. A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be deemed in compliance with such requirements for so long as the law continues to meet such requirements.

With the publication of these guidelines, OIG will accept requests for review of State laws to determine if they meet the requirements of section 1909(b) of the Act. In order to request OIG review of a State law, the State Attorney General's office should submit a complete copy of the State law, or any other relevant information, to the following address: Office of Inspector General, Department of Health and Human Services, Cohen Building, Mail Stop 5527, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Roderick Chen, Office of Counsel to the Inspector General.

Submissions by telecopier, facsimile, or other electronic media will not be accepted. OIG will review the State law under these guidelines and in consultation with DOJ, and inform the State Attorney General's office in writing whether the State law meets the requirements of section 1909(b) of the Act.

Dated: August 16, 2006.

Daniel R. Levinson,

Inspector General.

[FR Doc. E6–13749 Filed 8–18–06; 8:45 am]

BILLING CODE 4150–04–P

[2] DOJ is authorized to adjust the civil penalties under the FCA for inflation and has issued regulations that raise the FCA penalties. *See* Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990); 28 CFR 85.3. However, the statutory provisions of the FCA identify the range of civil penalties as $5,000 to $10,000, and OIG will review State laws based on those statutory provisions.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for the Chittenango Ovate Amber Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability: final revised recovery plan.

SUMMARY: We, the Fish and Wildlife Service (Service), announce availability of a final revised recovery plan for the endangered Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). The final plan incorporates comments received during the public and peer review period and updates the objectives, criteria, and actions for recovering this endangered species.

ADDRESSES: A copy of the revised plan may be requested by contacting the Fish and Wildlife Service's New York Field Office (NYFO), 3817 Luker Road, Cortland, New York 13045. Copies will also be available for downloading from the NYFO's Web site at *http://www.fws.gov/northeast/nyfo/es/recoveryplans.htm*, and from the

Service's Endangered Species Web site at *http://www.fws.gov/endangered/recovery/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Robyn Niver, U.S. Fish and Wildlife Service, at the above address or by telephone at 607–753–9334.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the Federally listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria which, when met, would result in a determination that the species no longer needs the protection of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. A final rule listing the Chittenango ovate amber snail *(Novisuccinea chittenangoensis)* as threatened was published in the **Federal Register** on July 3, 1978 (43 FR 28932), and became effective on August 2, 1978. The initial recovery plan for the species was completed in March 1983 (Riexinger, P., J. Proud, T. Lyons, and D. Sulitka. 1983. Chittenango ovate amber snail recovery plan. Region 5, U.S. Fish and Wildlife Service Report, in cooperation with the Chittenango Ovate Amber Recovery Team. March 24, 1983). A draft recovery plan revision was prepared and issued for the species in 2003.

Issuance of the draft revised plan included a notice of availability and opportunity for public comment (68 FR 68102, December 5, 2003) and other public notification efforts. Pertinent information received by the Service during the public comment period has been considered in preparation of the final revised recovery plan and is summarized in an appendix to the plan. This information will also be taken into account in the course of implementing recovery actions. In addition, new information on population status and genetics that has become available since publication of the draft in 2003 has informed the final plan with a better understanding of the snail's distribution within its sole population, and has alleviated concerns about possible hybridization between *Novisuccinea chittenangoensis* and an introduced snail occupying the same habitat. The new information has resulted in only a slight shift in the recovery strategy for this species, which continues to be highly imperiled.

Since its discovery in 1905, only one extant *N. chittenangoensis* colony has been verified, from a site within the Chittenango Falls State Park in Madison County, New York. The Chittenango ovate amber snail is a terrestrial species that requires the cool, mild-temperature, moist conditions provided by the waterfalls and mist in its environment. Its habitat lies within a ravine at the base of a 167-foot waterfall, and the ledges where it is found comprise an early successional sere that is periodically rejuvenated to a bare substrate by floodwaters. The species requires a substrate rich in calcium carbonate and appears to prefer green vegetation such as the various mosses, liverworts, and other low herbaceous vegetation found within the spray zone adjacent to the falls. Clean water may be necessary to maintain essential habitat, although water quality may have only an indirect effect on the snail.

The Chittenango ovate amber snail was listed due to its rarity and population decline. Since listing, habitat protection and captive propagation measures have been implemented. Unfortunately, the captive propagation efforts to date have been unsuccessful, and the species' status remains exceedingly precarious. The primary continuing threats to the snail are its small population size and limited distribution as well as an undefined negative interaction with an introduced snail, *Succinea* sp. B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance.

The final revised recovery plan includes updated scientific information about the Chittenango ovate amber snail and identifies research and management actions needed to conserve and recover species within its ecosystem. The recovery goal for the snail is to achieve long-term viability of the species in the wild, thereby allowing it to be taken off the Federal List of Endangered and Threatened Wildlife. The initial recovery objective is to stabilize the extant population at Chittenango Falls. Two necessary conditions for stabilization are maintaining (or increasing) the baseline population size of the natural colony and maintaining multiple captive populations of N. *chittenangoensis*. Achievement of the first condition will entail habitat management planning and research into the species' biological requirements and possible means of controlling the competing *Succinea* sp. B. In addition to securing the in situ conditions necessary to stabilize the natural population, captive propagation should be reinitiated in accordance with a newly established propagation protocol to safeguard against extinction of this species.

If and when stabilization of the extant N. *chittenangoensis* population at Chittenango Falls has been achieved, progress toward full recovery of the species can commence. This will include augmentation of the population at the Falls, searching for other possible extant populations, long-term maintenance of captive populations, and investigating the feasibility of initiating a population of N. *chittenangoensis* at an alternative location. The plan includes criteria for determining when the objectives of stabilization and full recovery have been met.

Author: Mary Parkin, Recovery Coordinator, Endangered Species Program, Fish and Wildlife Service, Region 5.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 27, 2006.

Michael G. Thabault,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. E6–13717 Filed 8–18–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on August 15, 2006, a proposed Consent Decree (''Decree'') in *United States and Commonwealth of Kentucky, Environmental and Public Protection Cabinet* v. *Mid-Valley Pipeline Company, Sunoco Pipeline L.P., and Sun Pipe Line Company*, Civil Action No. 06–57–KKC, was lodged with the United States District Court for the Eastern District of Kentucky.

In this action, the United States alleged Clean Water Act (''CWA'') violations arising from two spills of crude oil from the Mid-Valley Pipeline (MVPL). In the Complaint, the United

States asserts CWA claims for penalties and injunctive relief, and the Kentucky Cabinet asserts claims for penalties and costs under Kentucky Revised Statutes Chapter 224 and related Kentucky Administrative Regulations, against MVPL owner Mid-Valley Pipeline Company (''Mid-Valley'') and MVPL operator Sunoco Pipeline L.P. (''SPLP''), for the spill of 6,251 barrels of crude oil on January 26, 2005, in Owen County, Kentucky, into the Kentucky and Ohio Rivers. In addition, the United States asserts a CWA claim against Mid-Valley and then-operator Sun Pipe Line Company (''Sun'') for the spill of 1,500 barrels of crude oil on November 24, 2000, in Claiborne Parish, Louisiana, into Campit Lake. With respect to the Kentucky spill, the Decree provides for Mid-Valley and SPLP to pay a $2.57 million civil penalty ($1.4 million to the Unite States, and $1.17 million to the Cabinet), pay for a state environmental project at a cost of $230,000, perform injunctive relief related to enhancement of spill response preparation, and reimburse the Kentucky Cabinet for certain billed response costs. With respect to the November 2000 Louisiana discharge of 1,500 barrels, Mid-Valley and operator Sun are to pay a federal civil penalty of $300,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Commonwealth of Kentucky, Environmental and Public Protection Cabinet* v. *Mid-Valley Pipeline Company. Sunoco Pipeline L.P., and Sun Pipe Line Company*, D.J. Ref. 90–5–1–1–07957.

The Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 110 West Vine Street, Suite 400, Lexington, KY 40507–1671; at U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7028 Filed 8–18–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 20, 2006, Sigma Aldrich Manufacturing LLC., Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
N-Benzylpiperazine (BZP) (7493)	I
Trifluoromethylphenyl Piperazine (7494).	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

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 September 20, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: August 14, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–13727 Filed 8–18–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2006, and published in the **Federal Register** on April 25, 2006, (71 FR 23950), Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, 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 I and II:

Drug	Schedule
Codeine-N-oxide (9053)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the Schedule I controlled substances for internal testing; the Schedule II controlled substances will be manufactured in bulk for distribution to its customers.

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 Noramco Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco Inc. 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: August 14, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–13724 Filed 8–18–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Implementing the Salary and Bonus Limitations in Public Law 109–234

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice provides information regarding implementing salary and bonus limitations in Public Law 109–234. It is directed to all Employment and Training Administration (ETA) grantees, contractors and other recipients of ETA appropriated funds. The purpose of this Notice is to inform States and other ETA-fund recipients and sub-recipients of a new limitation on salary and bonus payments that can be made with funds appropriated to ETA and provide guidance on implementing this new provision.

SUPPLEMENTARY INFORMATION:

I. References

Public Law 109–234.

II. Background

On June 15, 2006, President Bush signed into law an emergency supplemental appropriations bill, Public Law 109–234. Section 7013 of this public law limits salary and bonus compensation for individuals who are paid by funds appropriated to the Employment and Training Administration and provided to recipients and sub-recipients. Specifically, section 7013 states:

> None of the funds appropriated in Public Law 109–149 or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after the date of enactment of this section shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs.

III. Policy Guidance

This policy guidance provides the workforce investment system with information on programs that are impacted by this provision; the effective date and cycles of funding that are impacted; covered individuals and transactions; the application of the limitation; related grant and contract modifications; action required; and where to direct inquiries.

IV. Programs Impacted by This Provision

The new salary and bonus limitation applies to all programs and activities undertaken through grants and contracts funded by an appropriation to ETA. Therefore, this limitation applies to all programs administered by ETA, unless the program falls within an exception outlined below.

The salary and bonus limitation also applies to programs funded by an ETA appropriation, but administered by another agency. For example, certain programs funded by ETA appropriations are administered by the Department of Labor's Veterans Employment and Training Service or the Department of the Interior. ETA will inform agencies which administer such programs of this new requirement. Any questions should be directed to the administering agency.

A recipient or sub-recipient may receive funds from ETA that are a combination of funds appropriated to ETA and funds that are not appropriated to ETA. In this situation, the limitations

of section 7013 as described in this TEGL apply to the portion of the funding that is appropriated to ETA.

Exceptions: This limitation does not apply to programs funded by H–1B grant funds. These funds are received from employer paid fees and are not appropriated. Therefore, the programs they fund are not covered by the salary and bonus limitation. Examples of such programs include activities funded through the WIRED Initiative and *some* High Growth Job Training Initiative grants.

The limitation also does not apply to the Disaster Unemployment Assistance (DUA) program. These funds are appropriated to the Federal Emergency Management Agency (FEMA) and transferred to ETA.

WIA incentive grants financed only through Department of Education appropriations are not covered by this limitation.

Public Law 109–234 specifically states that it does not change the limitations that Public Law 109–149 section 101 previously set for individuals paid through the Job Corps program. These limitations are still in effect. Questions concerning the applicability of the new provision to any Job Corps funds should be directed to Job Corps officials.

Any limitation on payments to individuals contained in grants or contracts with ETA which are more restrictive than Public Law 109–234 are not changed by Public Law 109–234. For example, any limitation on consultant fees in grants or contracts are generally more restrictive than the limitations in Public Law 109–234, when broken down as an hourly rate, and will continue to apply.

V. Effective Date and Funding Cycles Impacted

The limitation on salaries and bonuses applies to funds appropriated in Fiscal Year 2006 under Public Law 109–149 and prior year appropriation funds under the heading ''Employment and Training'' that remain available for expenditure. It applies to funds that are available for expenditure on or after June 15, 2006. It does not apply to funds expended before June 15, 2006.

VI. Covered Individuals and Transactions

The provision in Public Law 109–234 limits the use of funds used by a recipient or sub-recipient to pay for salary and bonuses of an individual. Examples of recipients include entities and their funded partners that receive contracts and grants from ETA. Examples of sub-recipients include sub-contractors or sub-grantees. Any salary or bonus payments made by a recipient or a sub-recipient to an individual are covered by this limitation. This limitation applies to such payments regardless of whether they are paid as a direct or an indirect cost.

However, according to the law this limitation does not apply to ''vendors'' as defined in OMB Circular A–133. A vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Characteristics indicative of a payment for goods and services received by a vendor are when the organization: (1) Provides the goods and services within normal business operations; (2) Provides similar goods or services to many different purchasers; (3) Operates in a competitive environment; (4) Provides goods or services that are ancillary to the operation of the Federal program; and (5) Is not subject to compliance requirements of the Federal program.

For example, an office supply business that provides ''off the shelf'' paper, printers, computers, software, etc. to other businesses, individuals, as well as to grant programs would be a vendor. Also, a training institution which provides one of its accounting courses/classes to any interested individual as well as to clients of an ETA funded grant program is acting as a vendor. However, when that same training institution develops and delivers a training course specifically for an ETA funded program it is acting as a sub-recipient even if others are allowed to attend and pay for the course/class at the institution's tuition rate.

VII. Application of the Limitation

The law sets the limit on salaries and bonuses at a rate equivalent to no more than Executive Level II. A salary table providing this rate is listed on the Federal Office of Personnel Management Web site (*http://www.opm.gov*) under Federal Salaries & Wages. These levels are adjusted annually and the Web site is updated annually. For FY 2006, the limit is set at $165,200. The Public Law 109–234 limitation does not apply to benefits that are not salary and bonuses. For example, fringe benefits, insurance premiums or pension plans paid by a recipient or sub-recipient are not included in this calculation.

Individuals can receive payments from funds not impacted by section 7013 in addition to funds that are impacted by 7013. For example an entity may receive funds from other Federal programs, from the State, from municipalities, or even private funds. In those instances the total sum of any employee's salary and bonuses may be higher than Executive Level II. However, in instances where funds impacted by section 7013 only pay a portion of the salary, the section 7013-impacted funds may only be charged for the share of the employee's salary attributable to the work on the section 7013-impacted grant or contract. That portion cannot exceed the Executive Level II rate. For example, if 25 percent of an employee's time is attributable to work performed under grants covered by the provision and the annual Executive Level II amount is $165,200, no more than $41,300 can be charged to ETA during the year.

If not already done, all affected recipients or sub-recipients must implement these requirements retroactively to the date of enactment, June 15, 2006. This provision means that salary payments will need to be adjusted back to June 15, 2006.

Bonuses: The restriction applies to both salaries and bonuses. The sum of all bonuses received over the previous 12-month period when added to the employee's salary may not at any time exceed the limitation. For example, an employee paid at a $162,000 may not receive bonuses in any 12-month period that exceeds $3,200, assuming the limitation of $165,200.

When States are the recipients of the funds, States can set a limit below Executive Level II for salaries paid by sub-recipients. However, States should take the factors listed in section 7013 into account when re-designating the limit.

VIII. Grant and Contract Modifications

Please be advised ETA will modify appropriate grants and contracts to conform to the new requirements of Public Law 109–234.

IX. Action Required

All recipients of ETA appropriated funds should become familiar with the requirements of Public Law 109–234. States shall inform all staff, sub-recipients (sub-grantees and contractors) and Local Workforce Investment Boards of the contents of these instructions. Discretionary grantees should similarly familiarize themselves, their sub-recipients (sub-grantees and sub-contractors) with this guidance. If not already done, all affected ETA fund recipients or sub-recipients must implement these new requirements retroactively to the date of enactment, June 15, 2006.

X. Inquiries

States, discretionary grantees and other ETA appropriated fund recipients should direct all inquiries to their Grant Officer, Contract Officer or Federal Project Officer.

This information is also released in the form of a Training Employment Guidance Letter (TEGL) which is available at *http://wdr.doleta.gov/directives/*.

(Authority: 20 CFR 661.110)

Signed at Washington, DC, this 15th day of August, 2006.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration, Labor.

[FR Doc. 06–7056 Filed 8–18–06; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–13]

Notice of Entering Into a Compact With the Government of the Republic of Benin; Correction

AGENCY: Millennium Challenge Corporation.

ACTION: Notice; correction.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) published a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Benin, dated February 22, 2006 (the ''Compact''). The complete text of the Compact contained incorrect figures in Exhibit A to Annex II.

FOR FURTHER INFORMATION CONTACT: Maura Griffin, 202–521–3867.

Correction

In the **Federal Register** of March 13, 2006, in FR Doc. 06–2252, on pages 12979–12980, replace ''Exhibit A.—Multi-Year Financial Plan Summary'' with the following:

EXHIBIT A.—MULTI-YEAR FINANCIAL PLAN SUMMARY

Project	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Access to Land						
(a) Policy Activity	520,000	260,000	520,000	0	0	1,300,000
(b) Registration Activity	3,310,000	6,550,000	4,605,000	4,375,000	4,320,000	23,160,000
(c) Services and Information Activity [1]	510,000	3,350,000	3,205,000	2,775,000	620,000	10,460,000
(d) IEC Activity	100,000	150,000	100,000	100,000	50,000	500,000
(e) Support Strategy Activity	120,000	120,000	120,000	120,000	120,000	600,000
Sub-Total	4,560,000	10,430,000	8,550,000	7,370,000	5,110,000	36,020,000
2. Access to Financial Services						
(a) Capacity Building Activity	1,770,000	3,570,000	3,870,000	3,570,000	270,000	13,050,000
(b) Financial Enabling Environment Activity	1,380,000	1,850,000	1,540,000	1,140,000	690,000	6,600,000
Sub-Total	3,150,000	5,420,000	5,410,000	4,710,000	960,000	19,650,000
3. Access to Justice						
(a) Arbitration Center (CAMeC) Activity	400,000	160,000	140,000	180,000	0	880,000
(b) Business Registration Activity	470,000	830,000	330,000	200,000	0	1,830,000
(c) Courts Activity [2, 3]	2,960,000	6,860,000	8,590,000	6,590,000	6,560,000	31,560,000
Sub-Total	3,830,000	7,850,000	9,060,000	6,970,000	6,560,000	34,270,000
4. Access to Markets						
(a) Studies Activity	5,993,000	2,101,000	0	0	0	8,094,000
(b) Port Institutional Activity	3,251,000	4,876,000	1,196,000	980,000	1,016,000	11,319,000
(c) Port Security and Landside Improvements Activity [4]	200,000	23,154,000	42,158,000	8,151,000	200,000	73,863,000
(d) Waterside Improvements Activity [5]	0	0	22,939,000	53,232,000	0	76,171,000
Sub-Total	9,444,000	30,131,000	66,293,000	62,363,000	1,216,000	169,447,000
Monitoring and Evaluation	3,190,000	1,690,000	1,240,000	1,240,000	1,420,000	8,780,000
Sub-Total	3,190,000	1,690,000	1,240,000	1,240,000	1,420,000	8,780,000
Program Administration and Control						
(a) Program Administration [6]	3,395,000	2,795,000	2,933,000	2,919,000	3,015,000	15,057,000
(b) Fiscal and Procurement Agent	3,398,688	3,398,688	3,398,688	3,398,688	3,398,688	16,993,440
(c) Audits	1,416,120	1,416,120	1,416,120	1,416,120	1,416,120	7,080,600
Sub-Total [7]	8,209,808	7,609,808	7,747,808	7,733,808	7,829,808	39,131,040
Total Estimated MCC Contribution [8]	32,383,808	63,130,808	98,300,808	90,386,808	23,095,808	307,298,040

[1] MCC Disbursements in connection with this Activity shall be conditioned upon, among others, the completion, satisfactory to MCC, of the relevant studies in Policy Activity and incorporation of the recommendations into implementation plans as appropriate.

[2] After the first $1 million for the legal aid services sub-activity described in Section 2(c)(iv) of *Schedule 3* to *Annex I*, any additional MCC Disbursement for this sub-activity shall be conditioned upon the Government obtaining matching funds to support the legal aid services program described in Section 2(c)(iv) of S*chedule 3* of *Annex I*.

[3] MCC Disbursements in connection with the new courthouses sub-activity described in Section 2(c)(v) of *Schedule 3* to *Annex I*, shall be conditioned upon, among others, passage of the Procedural Code and certain other codes, which codes should contain adequate provisions in areas as may be specified by MCC in the relevant Supplemental Agreement (including with respect to the Procedural Code, provisions pertaining to the speed with which court cases are heard, and the means by which cases proceed through the courts).

[4] MCC Disbursements in connection within the landside improvements sub-activity described in Section 2(c)(ii) of *Schedule 4* of *Annex I* shall be conditioned upon, among others, the following: (i) renegotiation of existing concession and lease agreements on terms acceptable to MCC that provide for capital investment based upon the demand for Port services, (ii) a contract management program of the dry bulk conveyor system acceptable to MCC, (iii) the completion of Initial Technical Studies, (iv) a Government commitment of funding, or commitments obtained from another funding source (satisfactory to MCC) for amounts in excess of budgeted amount in the Detailed Financial Plan, including amounts that may be necessary for environmental and mitigation, and (v) subject to results, satisfactory to MCC, of feasibility studies and ESIA that includes an environmental audit and EMP, (vi) redesign of the fish inspection facility, (vii) completion of a World Bank privatization and competitiveness study, and (viii) selection of a construction management agent.

[5] MCC Disbursement in connection with the waterside improvements sub-activity described in Section 2(d) of *Schedule 4* of *Annex I* shall be conditioned upon, among others, the following: (i) satisfactory results of the Initial Technical Studies, (ii) demonstration, satisfactory to MCC, of improvements in customs and warehouse systems operations, (iii) implementation of recommendations of the independent financial auditor, (iv) obtaining environmental permits, (v) a Government commitment of funding, or commitments obtained from another funding source (satisfactory to MCC) for amounts in excess of budgeted amount in the Detailed Financial Plan, including amounts that may be necessary for environmental and mitigation, (vi) results, satisfactory to MCC, of feasibility studies and ESIA that includes an environmental audit and EMP and (vii) the completion of a long-term management services agreement for the operation of a Port sedimentation facility (or other harbor dredging program, as appropriate) on terms satisfactory to MCC.

[6] The total administration budget as a percentage of the Program cost is equal to 5.61%.

[7] The total implementation budget as a percentage of the Program cost is equal to 14.59%.

[8] Total Government contribution of 5 billion CFA to be included in the annual national budget (1.25 billion CFA per year during the first four years of Compact) and to be allocated in a manner agreed upon by the Parties in writing.

Dated: August 15, 2006.

John C. Mantini,

Acting General Counsel, Millennium Challenge Corporation.

[FR Doc. E6–13697 Filed 8–18–06; 8:45 am]

BILLING CODE 9210–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its September 23, 2004, application for proposed amendment to Facility Operating License No. NPF–90 for the Watts Bar Nuclear Plant, Unit No. 1, located in Rhea County, Tennessee.

The proposed amendment would have revised Technical Specification Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' to allow the auxiliary feedwater start signal upon trip of all main feedwater pumps to be required only when one or more of the turbine driven main feedwater pumps are operating.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 7, 2004 (69 FR 70722). However, by letter dated July 28, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 23, 2004, as supplemented by letter dated May 25, 2006, and the licensee's letter dated July 28, 2006, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.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 8th day of August, 2006.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13716 Filed 8–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–29661]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Termination for Michigan Biotechnology Institute, Lansing, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Decommissioning Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352. Telephone: 630–829–9870; fax number: 630–515–1259; e-mail: *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license termination of Material License No. 21–24836–01 issued to Michigan Biotechnology Institute (the licensee), to authorize release of its Lansing facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to terminate Byproduct Material License No. 21–24836–01 issued to Michigan Biotechnology Institute, and release its Lansing, Michigan facility for unrestricted use. The NRC's license authorized the licensee to use labeled compounds such as hydrogen-3, carbon-14, phosphorus-32, sulfur-35, etc. for research and development. On March 7, 2006, the licensee submitted a license termination request to release its Lansing facility for unrestricted use. The licensee has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets

the license termination criteria in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.''

The staff has examined the licensee's request and the information provided in support of its request, including the surveys performed to demonstrate compliance with the release criteria. The staff has found that the radiological environmental impacts from the proposed action are bounded by the impacts evaluated in the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action and a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

On the basis of the EA, the NRC concluded that there are no significant environmental impacts from the proposed amendment and 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 Document 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: ML060690446 for the March 7, 2006, license termination request, ML061980294 for the July 11, 2006, additional information to the amendment request, and ML062190210 for the EA summarized above. 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 1–800–397–4209, 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, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 10th day of August 2006.

For the Nuclear Regulatory Commission.

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E6–13718 Filed 8–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding LCO 3.10.1, Inservice Leak and Hydrostatic Testing Operation Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of shutdown testing requirements in technical specifications (TS) for Boiling Water Reactors (BWR). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to modify LCO 3.10.1 that would allow control rod scram time testing to be performed concurrently with inservice leak and hydrostatic testing. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires September 20, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland. Comments may be submitted by electronic mail to *NRCREP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Kobetz, Mail Stop: O–12H2, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1932.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposal to modify LCO 3.10.1 that would allow control rod scram time testing to be performed concurrently with inservice leak and hydrostatic testing. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees.

This notice involves the modification of LCO 3.10.1 that would allow control rod scram time testing to be performed concurrently with inservice leak and hydrostatic testing. This change was proposed for incorporation into the standard technical specifications by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–484. TSTF–484 can be viewed on the NRC's Web page utilizing the Agencywide Documents Access and Management System (ADAMS). ADAMS accession numbers are ML052930102 (TSTF–484 Submittal), ML060970568 (NRC Request for Additional Information, RAI), and ML061560523 (TSTF Response to NRC RAIs).

Applicability

Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to an operating license to announce the modification of TS 3.10.1, Inservice Leak and Hydrostatic Testing, for each plant that receives the requested change.

Proposed Safety Evaluation—U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities

1.0 Introduction

By application dated [Date], [Name of Licensee] (the licensee) requested changes to the Technical Specifications (TS) for the [Name of Facility].

The proposed changes would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

2.0 Regulatory Evaluation

2.1 Inservice Leak and Hydrostatic Testing

The Reactor Coolant System (RCS) serves as a pressure boundary and also serves to provide a flow path for the circulation of coolant past the fuel. In order to maintain RCS integrity, Section XI of the American Society of Mechanical Engineers (ASME) Pressure Vessel Code requires periodic hydrostatic and leakage testing. Hydrostatic tests are required to be performed once every 10 years and Leakage tests are required to be performed each refueling outage. Appendix G to 10 CFR Part 50 states that pressure tests and leak tests of the reactor vessel that are required by Section XI of the American Society of Mechanical Engineers (ASME) Pressure Vessel Code must be completed before the core is critical.

NUREG–1433, General Electric Plants, BWR/4, Revision 3, Standard Technical Specifications (STS) and NUREG–1434, General Electric Plants, BWR/6, Revision 3, STS both currently contain LCO 3.10.1, Inservice Leak and Hydrostatic Testing Operation. LCO 3.10.1 was created to allow for hydrostatic and leakage testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200]°F provided certain secondary containment LCOs are met.

TSTF–484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to implement LCO 3.10.1 while hydrostatic and leakage testing is being conducted should average reactor coolant temperature exceed [200]°F during testing. This modification does not alter current requirements for hydrostatic and leakage testing as required by Appendix G to 10 CFR part 50.

2.2 Control Rod Scram Time Testing

Control Rods function to control reactor power level and to provide adequate excess negative reactivity to shut down the reactor from any normal operating or accident condition at any time during core life. The control rods are scrammed by using hydraulic pressure exerted by the Control Rod Drive (CRD) system. Criterion 10 of Appendix A to 10 CFR part 50 states that the reactor core and associated coolant, control, and protection systems shall be designed with appropriate margin to assure that specified acceptable fuel limits are not exceed during any condition of normal operation, including the effects of anticipated operational occurrences. The scram reactivity used in design basis accidents (DBA) and transient analyses is based on an assumed control rod scram time.

NUREG–1433, General Electric Plants, BWR/4, Revision 3, Standard Technical Specifications (STS) and NUREG–1434, General Electric Plants, BWR/6, Revision 3, STS both currently contain surveillance requirements (SR) to conduct scram time testing when certain conditions are met in order to ensure that Criterion 10 of Appendix A to 10 CFR part 50 is satisfied. SR 3.1.4.1 requires scram time testing to be conducted following a shutdown greater than 120 days while SR 3.1.4.4 requires scram time testing to be conducted following work on the CRD system or following fuel movement within the affected core cell. Both SR must be performed at reactor pressure greater than or equal to [800] psig and prior to initially exceeding 40% rated thermal power (RTP).

TSTF–484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, would modify LCO 3.10.1 to allow SR 3.1.4.1 and SR 3.1.4.4 to be conducted in Mode 4 with average reactor coolant temperature greater than [200]°F. Scram time testing would be performed in accordance with LCO 3.10.4, Single Control Rod Withdrawal—Cold Shutdown. This modification to LCO 3.10.1 does not alter the means of compliance with Criterion 10 of Appendix A to 10 CFR part 50.

3.0 Technical Evaluation

The existing provisions of LCO 3.10.1 allow for hydrostatic and leakage testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200]°F, while imposing Mode 3 secondary containment requirements. Under the existing provision, LCO 3.10.1 would have to be implemented prior to hydrostatic and leakage testing. As a result, if LCO 3.10.1 was not implemented prior to hydrostatic and leakage testing, hydrostatic and leakage testing would have to be terminated if average reactor coolant temperature exceeded [200]°F during the conduct of the hydrostatic and leakage test. TSTF–484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to implement LCO 3.10.1 while hydrostatic and leakage testing is being conducted should average reactor coolant temperature exceed [200]°F during testing. The modification will allow completion of testing without the potential for interrupting the test in order to reduce reactor vessel pressure, cool the RCS, and restart the test below

[200]°F. Since the current LCO 3.10.1 allows testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200]°F, the proposed change does not introduce any new operational conditions beyond those currently allowed.

Surveillance Requirements (SR) 3.1.4.1 and SR 3.1.4.4 require that control rod scram time be tested at reactor pressure greater than or equal to [800] psig and before exceeding 40% rated thermal power (RTP). Performance of control rod scram time testing is typically scheduled concurrent with inservice leak or hydrostatic testing while the reactor coolant system (RCS) is pressurized. Because of the number of control rods that must be tested, it is possible for the inservice leak or hydrostatic test to be completed prior to completing the scram time test. Under existing provisions, if scram time testing can not be completed during the LCO 3.10.1 inservice leak or hydrostatic test, scram time testing must be suspended. Additionally, if LCO 3.10.1 is not implemented and average reactor coolant temperature exceeds [200]°F while performing the scram time test, scram time testing must also be suspended. In both situations, scram time testing is resumed during startup prior to exceeding 40% RTP. TSTF–484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to complete scram time testing initiated during inservice leak or hydrostatic testing. As stated earlier, since the current LCO 3.10.1 allows testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200]°F, the proposed change does not introduce any new operational conditions beyond those currently allowed. Completion of scram time testing prior to reactor criticality and power operations results in a more conservative operating philosophy with attendant potential safety benefits.

It is acceptable to perform other testing concurrent with the inservice leak or hydrostatic test provided that this testing can be performed safely and does not interfere with the leak or hydrostatic test. However, it is not permissible to remain in TS 3.10.1 solely to complete such testing following the completion of inservice leak or hydrostatic testing and scram time testing.

Since the tests are performed with the reactor pressure vessel (RPV) nearly water solid, at low decay heat values, and near Mode 4 conditions, the stored energy in the reactor core will be very low. Small leaks from the RCS would be detected by inspections before a significant loss of inventory occurred. In addition, two low pressure emergency core cooling systems (ECCS) injection/spray subsystems are required to be operable in Mode 4 by TS 3.5.2, ECCS-Shutdown. In the event of a large RCS leak, the RPV would rapidly depressurize and allow operation of the low pressure ECCS. The capability of the low pressure ECCS would be adequate to maintain the fuel covered under the low decay heat conditions during these tests. Also, LCO 3.10.1 requires that secondary containment and standby gas treatment system be operable and capable of handling any airborne radioactivity or steam leaks that may occur during performance of testing.

The protection provided by the normally required Mode 4 applicable LCOs, in addition to the secondary containment requirements required to be met by LCO 3.10.1, minimizes potential consequences in the event of any postulated abnormal event during testing. In addition, the requested modification to LCO 3.10.1 does not create any new modes of operation or operating conditions that are not currently allowed.

4.0 State Consultation

In accordance with the Commission's regulations, the [Name of State] State official was notified of the proposed issuance of the amendment. The State official had [no] comments. [If comments were provided, they should be addressed here].

5.0 Environmental Consideration

The amendment changes a requirement with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. A significant hazards consideration is attached and is available for public comment. The amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. NUREG–1433, ''General Electric Plants, BWR/4, Revision 3, Standard Technical Specifications (STS)'', August 31, 2003.

2. NUREG–1434, General Electric Plants, BWR/6, Revision 3, Standard Technical Specifications (STS)'', August 31, 2003.

3. Request for Additional Information (RAI) Regarding TSTF–484, April, 7, 2006, ADAMS accession number ML060970568.

4. Response to NRC RAIs Regarding TSTF–484, June 5, 2006, ADAMS accession number ML061560523.

5. TSTF–484 Revision 0, ''Use of TS 3.10.1 for Scram Times Testing Activities'', May 5, 2005, ADAMS accession number ML052930102.

Model No Significant Hazards Determination

Description of Amendment Request: The proposed changes would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

Basis for No Significant Hazards Determination: As required by 10 CFR 50.91 (a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Technical Specifications currently allow for operation at greater than

[200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in a margin of safety.

Technical Specifications currently allow for operation at greater than [200]°F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

Principal Contributor: Aron Lewin.

Dated at Rockville, Maryland this 15th day of August 2006.

For the Nuclear Regulatory Commission.

Timothy Kobetz,

Branch Chief, Technical Specifications Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13715 Filed 8–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of a Meeting; Yucca Mountain, NV

Workshop: September 25–26, 2006—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review board will host a workshop on the potential for localized corrosion of Alloy-22, the material that has been proposed for waste packages in which spent nuclear fuel and high-level radioactive waste will be disposed of inside the proposed Yucca Mountain repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will host a workshop on localized corrosion in Las Vegas, Nevada. The focus of the workshop will be the potential for localized corrosion of Alloy-22 under aqueous conditions that might exist in a proposed Yucca Mountain repository. Alloy-22 is a material that has been proposed for waste packages in which spent nuclear fuel and high-level radioactive waste will be disposed of inside the proposed repository. Among the workshop topics will be results of recent and ongoing testing related to evolution of aqueous environments in the repository and the potential initiation, propagation, cessation, and consequences of localized corrosion of Alloy-22. The Board was charged in the Nuclear Waste Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of U.S. Department of Energy (DOE) activities related to disposing, packaging, and transporting of spent nuclear fuel and high-level radioactive waste.

The workshop agenda will be available on the Board's Web site *http://www.nwtrb.gov*) approximately one week before the date of the workshop. The agenda also may be obtained by telephone request at that time. The workshop will be open to the public, and opportunities for public comment will be provided. Transcripts of the workshop proceedings and overheads from workshop presentations will be available on the Board's Web site approximately three weeks after the workshop date.

The workshop will be held at the Las Vegas Marriott Suites; 325 Convention Center Drive; Las Vegas, Nevada 89109; telephone 702–650–2000; fax 702–650–9466.

The workshop will begin Monday afternoon with introductions of the participants; presentations of the ground rules; and a discussion of possible waste package environments, including data obtained from current and ongoing tests, interpretation of the data, and modeling used to project possible waste package environments.

On Tuesday morning, the workshop will reconvene, and discussions will focus on testing related to the potential for localized corrosion of the Alloy-22 waste packages. The discussions will continue until late afternoon, when the workshop will adjourn.

Time will be set aside during the workshop for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in-table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the workshop will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff no later than October 19, 2006.

A block of rooms has been reserved for workshop attendees and participants at the Las Vegas Marriott Suites. When making a reservation, please state that you will be attending the Nuclear Waste Technical Review Board workshop. Reservations should be made by September 1, 2006, to ensure receiving the workshop rate.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; 703–235–4473; fax 703–235–4495.

Dated: August 16, 2006.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 06–7049 Filed 8–18–06; 8:45am]

BILLING CODE 6820–AM–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of a Board Meeting; Amargosa Valley, NV

Board meeting: September 27, 2006—Amargosa Valley, Nevada; The U.S. Nuclear Waste Technical Review Board will meet to discuss U.S. Department of Energy efforts to develop and articulate a safety case for the proposed Yucca Mountain repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Amargosa Valley, Nevada, on Wednesday, September 27, 2006, to

review the Department of Energy's (DOE) efforts to develop and articulate a safety case for a proposed geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. The Board was charged in the Nuclear Waste Policy Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of DOE activities related to implementing the Nuclear Waste Policy Act.

A final meeting agenda will be available on the Board's Web site (*http://www.nwtrb.gov*) approximately one week before the meeting date. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will be held at the Longstreet Inn and Casino; Stateline and Highway 373; Amargosa Valley, Nevada 89020; telephone 775–372–1777; fax 775–372–1280.

The meeting will begin at 8 a.m. with an overview of the Yucca Mountain program. Presentations on DOE's safety case will continue throughout the day.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff no later than October 23, 2006.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; 703–235–4473; fax 703–235–4495.

Dated: August 16, 2006.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 06–7050 Filed 8–18–06; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon written request; copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form T–1, OMB Control No. 3235–0110, SEC File No. 270–121

Form T–2, OMB Control No. 3235–0111, SEC File No. 270–122

Form T–3, OMB Control No. 3235–0105, SEC File No. 270–123

Form T–4, OMB Control No. 3235–0107, SEC File No. 270–124

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee. The information is used to determine whether the trustee is qualified to serve under the indenture. Form T–1 takes approximately 15 hours per response to prepare and is filed by 13 respondents. We estimate that 25% of the 15 burden hours (4 hours per response) is prepared by the company for a total reporting burden of 52 hours (4 hours per response x 13 responses). The remaining 75% of the burden hours is attributed to outside cost.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee to serve under an indenture relating to debt securities offered publicly. The information is used to determine whether the trustee is qualified to serve under the indenture. Form T–2 takes approximately 9 hours per response to prepare and is filed by 36 respondents. We estimate that 25% of the 9 burden hours (2 hours per responses) is prepared by the filer for a total reporting burden of 72 hours (2 hours per response × 36 responses). The remaining 75% of the burden hours is attributed to outside cost.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided by Form T–3 is used by the staff to decide whether to qualify an indenture relating to securities offered to the public in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 takes approximately 43 hours per response to prepare and is filed by 78 respondents. We estimate that 25% of the 43 burden hours (11 hours per response) is prepared by the filer for a total reporting burden of 858 hours (11 hours per response × 78 responses). The remaining 75% of the burden hours is attributed to outside cost.

Form T–4 (17 CFR 269.4) is used to apply for an exemption pursuant to Section 304(c) (15 U.S.C. 77ddd (c)) of the Trust Indenture Act of 1939 (77 U.S.C. 77aaa *et seq.*) and is transmitted to shareholders. Form T–4 takes approximately 5 hours per response to prepare and is filed by 3 respondents. We estimate that 25% of the 5 burden hours (1 hour per response) is prepared by the filer for a total reporting burden of 3 hours (1 hour per response × 3 responses). The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Greenway, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: August 14, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–13723 Filed 8–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54317; File No. SR–Amex–2006–70]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Application of Certain Violations of the Minor Rule Violation Fine Plan to Registered Options Traders, Supplemental Registered Options Traders, and Remote Registered Options Traders

August 15, 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 31, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by Amex. On August 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 590, which codifies the Exchange's Minor Rule Violation Fine Plan, to include additional violations of certain rules applicable to Registered Options Traders (''ROTs''), Supplemental Registered Options Traders (''SROTs''), and Remote Registered Options Traders (''RROTs'').

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Amex Rule 590, the Minor Rule Violation Fine Plan, to include the violations of certain rules applicable to ROTs, SROTs, and RROTs.

The Exchange's Minor Rule Violation Fine Plan provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Minor Rule Violation Fine Plan has three distinct sections: Part 1 (''General Rule Violations''), which covers more substantive matters that, nonetheless, are deemed ''minor'' by the Commission and Amex; Part 2 (''Floor Decorum''), which covers Floor Decorum and operational matters; and Part 3 (''Reporting Violations''), which covers the late submission of routine reports.

Part I of Rule 590 paragraph (g) applies to members, member organizations, approved persons, or employees of members or member organizations. In this regard, the Exchange proposes to amend Part 1 of Rule 590 to include additional violations of certain rules applicable to ROTs, SROTs, and RROTs. The proposal includes the addition of the failure to comply with ROT, SROT, and RROT quoting requirements, pursuant to Rules 958–ANTE (h)(iii), 993–ANTE (c)(ii), and 994–ANTE (c)(iv).[4]

Rule 958–ANTE (h)(iii) provides that if a ROT transacted 20% or more of his or her contract volume electronically, and not through open outcry, during any calendar quarter, then for the next quarter he or she would have an electronic quoting obligation. This analysis is performed separately for each ROT's assigned option classes. The required percentage varies from 20% to 60% depending on the contract volume executed electronically on the Amex, in that option class, by all Amex market participants. Rules 993–ANTE (c)(ii) and 994–ANTE (c)(iv) require SROTs and RROTs to provide continuous two-sided quotations in accordance with Rule 958–ANTE (c), in at least 60% of the series of their assigned classes.

Furthermore, the Exchange proposes to include as a violation, the restriction on quoting outside assigned classes, as set forth in Rule 958–ANTE (a), Commentary .03 to Rule 993–ANTE, and 994–ANTE (c)(iii). Commentary .03 to Rule 993–ANTE provides that a SROT may act in a market-making capacity only in the option classes to which it is assigned, while Rule 994–ANTE (c)(iii) states that a RROT may not enter quotations electronically from outside the trading crowd in options classes in which it is not assigned as an RROT.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex provided a specific paragraph citation for the violation of Rule 958—ANTE (relating to the restriction on ROTs quoting outside their assigned option class), modified the description of this particular violation and similar violations under the SROT and RROT rules, and corrected an omission in the original proposed rule text.

[4] The Exchange's SROT and RROT programs were recently approved by the Commission on April 12, 2006 and April 13, 2006, respectively. *See* Securities Exchange Act Release No. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006) (order approving the SROT program); Securities Exchange Act Release No. 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (order approving the RROT program).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–70 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–70 and should be submitted on or before September 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13728 Filed 8–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54315; File No. SR–ISE–2006–43]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

August 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On August 10, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on nine Premium Products.[6] The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following nine Premium Products: PowerShares Water Resources Portfolio (''PHO''),[7] SPDR Homebuilders ETF (''XHB''),[8] iShares FTSE/Xinhua China 25 Index Fund (''FXI''), iShares Dow Jones Select

[7] 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 revised the rule text contained in Exhibit 5 to conform it to the discussion contained in the Purpose section, which explains that a ten (10) cent per contract surcharge applies only to IWB, IWD, XLV, XLU, and XLK and not to all of the Premium Products that are the subject of this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] ''Premium Products'' is defined in the ISE's Schedule of Fees as the products enumerated therein.

[7] PowerShares™ and PHO™ are trademarks of PowerShares Capital Management LLC (''PowerShares''). The Palisades Water Index is a trademark of Hydrogen Ventures and has been licensed for use for certain purposes by PowerShares. All other trademarks and service marks are the property of their respective owners. The PHO is not sponsored, endorsed, sold or promoted by Hydrogen Ventures, and Hydrogen Ventures makes no representation regarding the advisability of investing in PHO. Hydrogen Ventures and PowerShares have not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PHO; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PHO or with making disclosures concerning options on PHO under any applicable Federal or state laws, rules or regulations. Hydrogen Ventures and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' ''Standard & Poor's 500®'' ''Standard & Poor's Depositary Receipts®,'' ''SPDR®,'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill''), and have been licensed for use by State Street Bank and Trust in connection with the listing and trading of XHB on the American Stock Exchange. XHB is not sponsored, sold or endorsed by Standard & Poor's, (''S&P''), a division of

Continued

Dividend Index Fund (''DVY''),[9] iShares Russell 1000 Index Fund (''IWB''), iShares Russell 1000 Value Index Fund (''IWD''), Health Care Select Sector SPDR Fund (''XLV''), Utilities Select Sector SPDR Fund (''XLU''), and Technology Select Sector SPDR Fund (''XLK'').[10] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK.[11] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [12] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[13] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.16 and $0.03 per contract, respectively. All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into a license agreement with the Frank Russell Company and Standard & Poor's in connection with the listing and trading of options on IWB, IWD and XLV, XLU, and XLK, as applicable. As with certain other licensed options, the Exchange proposes to adopt a fee of ten (10) cents per contract for trading in these options to defray the licensing costs. The Exchange believes charging the participants that trade these products is the most equitable means of recovering the costs of the licenses. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to Linkage Orders [14] under a pilot program that is set to expire on July 31, 2006.[15] Finally, since options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK are multiply-listed, the Payment for Order Flow fee shall also apply.

2. Statutory Basis

The Exchanges believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act [16] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–43 on the subject line.

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[9] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''Dow Jones'' and ''Dow Jones U.S. Select Dividend Index Fund'' are trademarks and service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by BGI. ''FTSE'' is a trademark jointly owned by the London Stock Exchange PLC and The Financial Times Limited. ''Xinhua'' is a service mark and trademark of Xinhua Financial News Network Limited. All marks are licensed for use by FTSE/Xinhua Index Limited. All other trademarks and service marks are the property of their respective owners. Neither DVY nor FXI are sponsored, endorsed, issued, sold or promoted by Dow Jones or FTSE/Xinhua Index Limited. BGI, Dow Jones, and FTSE/Xinhua Index Limited have not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DVY and FXI; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DVY and FXI or with making disclosures concerning options on DVY and FXI under any applicable Federal or state laws, rules or regulations. BGI, Dow Jones, and FTSE/Xinhua Index Limited do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[10] PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

[11] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). *See infra* footnote 15 (regarding ISE's proposed rule change to extend its Linkage fees pilot program).

[12] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[13] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[14] *See* ISE Rule 1900.

[15] In File No. SR–ISE–2006–38, the Exchange proposed, and the Commission subsequently approved, a rule change to extend the Linkage fees pilot program until July 31, 2007. *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 19b–4(f)(2).

[19] The effective date of the original proposed rule is July 25, 2006. The effective date of Amendment No. 1 is August 10, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 10, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

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–ISE–2006–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–43 and should be submitted on or before September 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13725 Filed 8–18–06; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54316; File No. SR–NYSE–2006–59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Specialists Hitting Bids and/or Taking Offers Algorithmically on a Temporary Basis Until Phase II of the Hybrid Market Is Fully Implemented

August 15, 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 August 8, 2006, the New York Stock Exchange LLC (''NYSE'' 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 the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Exchange Rule 104 (Dealings by Specialists) with respect to the specialists' ability to establish systems employing algorithms to send messages via a connection to the Display Book® for the purpose of quoting or executing trades systemically. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through the NYSE Hybrid Market SM initiative,[5] the Exchange is permitting specialists to establish electronic connections to the Display Book® system[6] (''Display Book''). Specialists will have electronic access to certain information which will permit them to make a range of specified quoting and trading decisions based on that information via the Display Book connection. Specifically, the amendments to Rule 104 (Dealings by Specialists) pursuant to the NYSE Hybrid Market SM provide specialists with the ability to implement systems that use proprietary algorithms based on predetermined parameters to electronically participate in the Hybrid Market SM (''Specialist Algorithm''). The Specialist Algorithm is designed to communicate with the Display Book via an Exchange-owned external application program interface (''API'').

As approved in the Hybrid Market initiative, the Specialist Algorithm is permitted to send messages to the Display Book via the API to quote or trade on behalf of the specialist's proprietary interest. The Specialist Algorithm will generate these quoting or trading messages in reaction to specific types of information it will have access to. This information includes specialist dealer position, existing quotes, publicly available information the specialist chooses to supply to the algorithm, incoming orders as they are entering Exchange systems, and information about orders on the Display Book such as limit orders, percentage orders, stop orders, and auction limit and auction market orders. This latter information stream is known as ''state of the book'' information.

The Exchange has continued to discuss Hybrid Market features with its members and advisory committees. Based on these discussions, the Exchange has effected selective changes to certain aspects of the Hybrid Market,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

[6] The Display Book system is an order management and execution facility. It receives and displays orders to the specialist, contains the orders received by the specialist (the ''Book''), and provides a mechanism to execute and report transactions to the Consolidated Tape.

to produce a trading venue that best addresses the various needs of the Exchange members and customers.

On June 20, 2006, the Exchange filed a proposed rule change [7] with the Commission that was effective upon filing to amend Rule 104(b). That proposal added Rule 104(b)(i) to permit specialists to send quoting messages via the API in all securities without the specialists having access to information about incoming orders as they are entering Exchange systems. That proposal also specified that Rule 104(b)(i) would be superseded when Phase II of the Hybrid Market is fully implemented.

In this current filing, the Exchange seeks to amend current Rule 104(b)(i) to renumber it as Rule 104(aa)(i) and to clarify that the specialists will have the ability to send quoting messages as described above without the need for Exchange authorization.

In addition, the Exchange seeks to further amend Rule 104 to add a new section (aa)(ii), to permit specialists to algorithmically execute transactions against the Exchange's best bid or offer (''Hit Bid/Take Offer'') in any security. As with the quoting messages governed by Rule 104(aa)(i), the API will not have information about incoming orders as such orders are entering Exchange systems. Pursuant to Rule 104(c), specialist messages to trade with the Exchange published quote must include a code identifying the reason for the algorithmic action, the unique identifier of the order to which the algorithmically-generated message is reacting (if any), the unique identifier of the order immediately preceding the generation of the algorithmically-generated message and any other information the Exchange may require. Hit Bid/Take Offer messages will be processed by the Display Book in such a manner that a specialist's algorithmic message to trade with the Exchange published quotation does not possess any speed advantage in reaching the Display Book by delaying the processing of this type of trading message from the Specialist Algorithm.[8]

The proposed amendments discussed in this filing will be superseded with the Exchange Rule 104 amendments, as previously approved in the NYSE Hybrid Market SM initiative, when Phase II of Hybrid Market SM is fully implemented. All other provisions of Rule 104 remain in effect, including but not limited to, provisions governing stabilization and the specialist's negative obligation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow specialists to begin testing their APIs. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be

[7] *See* Securities Exchange Act Release No. 54024 (June 21, 2006), 71 FR 124 (June 28, 2006).

[8] *See* Securities and Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006). Based upon the average transit time from the Exchange Common Message Switch (CMS) system to the Display Book system, the Exchange would determine the appropriate amount of time to delay the processing of algorithmic messages to trade with the Exchange published quotation. The delay parameter would be adjusted periodically to account for changes to the average transit time resulting from capacity and other upgrades to Exchange systems.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 14 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–59 and should be submitted on or before September 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13726 Filed 8–18–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54309; File No. SR–NYSEArca–2006–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the NYSE Arca Schedule of Fees and Charges for Exchange Services

August 11, 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 August 1, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order make changes to transaction charges, dues, and fees. The Exchange also proposes the elimination of certain obsolete fees and the implementation of certain new fees. The changes to the Schedule pursuant to this proposal became effective on August 1, 2006. The text of the proposed rule change is available on NYSE Arca's Web site at *http://www.nysearca.com*, at the principal office of NYSE Arca, and at the Commission's Public Reference Room.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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

As part of its ongoing effort to improve competitiveness through technology and new rules, NYSE Arca is proposing changes to its Schedule in conjunction with the implementation of its new OX trading platform.[6] The new rate Schedule will eliminate all application fees, enhance Option Trading Permit (''OTP'') fees and cut transaction charges. A new per issue fee conveying Lead Market Maker (''LMM'') rights will also be implemented that assesses monthly fees based on the average daily trading volume of an LMM's allocations. Under the proposal, the Cancellation fee will be phased out, as it will only apply to issues trading on PCX Plus. The 5% invoice surcharge that the Exchange presently assesses will be terminated. NYSE Arca also proposes to update any reference to the name of the Exchange contained in the Schedule to reflect its recent name change.[7] In order to offer a more user-friendly format, the Schedule has also been reformatted with all footnotes being replaced, as needed, with endnotes contained in an easy to read summary at the end of the Schedule. What follows details the exact nature of the changes in the Schedule.

Application Fees

All application fees will be eliminated. These include the Application fee, Reapplication fee, OTP Activation fees and the Joint Account Application fee. The OTP Intra Firm Transfer fees are also being eliminated.

OTP Fees

OTP Trading Participant Rights will replace the existing OTP Fee of $750 per month, which has been applicable to Floor Brokers, Market Makers and off floor firms. OTP Trading Participation Rights for Floor Brokers and Office Firms will now be $1,000 per month per OTP. Under the proposal, neither group will pay for an access fee. The existing Access fee of $130 will only be assessed on registered floor personnel that do not pay an OTP fee. The $5,000 per month fee cap on Access fees will be eliminated. The existing $500 per month Floor Broker fee will no longer apply.

OTP Trading Participant Rights for NYSE Arca Market Makers will be $4,000 fee per OTP. Participation Rights for NYSE Arca Market Makers will be subject to a monthly cap of $16,000 per Market Maker. Under the proposed changes, Market Makers will no longer pay the existing $1,500 Market Maker fee or the $130 Access fee. Although the direct expense associated with a single OTP will increase, the Exchange believes that restructuring of fixed fees relative to transaction fees will encourage trading on the Exchange by market makers. In addition, the maximum cost for a market making firm to stream quotes and transact business in all issues on the Exchange has been significantly reduced, from $33,280 per month to $16,000 per month.

Lead Market Maker Rights

OTP Firms acting as LMMs will be assessed a fee for LMM Rights on a per issue basis in addition to the OTP Trade Participant Rights. The LMM Rights, assessed on every issue that an LMM

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange effected certain technical changes to the proposed Schedule via telephone. Conversation between Janet Angstadt, Acting General Counsel, NYSE Arca and Tim Fox, Special Counsel, Commission, on August 9, 2006.

[6] OX, the Exchange's new electronic trading platform for options will be replacing PCX Plus, the Exchange's existing electronic trading system. OX is being introduced as a part of a phased-in rollout in August 2006. *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13).

[7] The Exchange recently amended its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. See Securities and Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR–PCX–2006–24).

has been allocated, will be based on the average daily volume (''ADV'') of customer contracts traded in that issue. The ADV will be calculated using customer volume figures as reported by the Options Clearing Corporation.[8]

For issues with an ADV of between 0–2,000 contracts, the LMM Rights fee will be $150 per stock. For issues with an ADV of between 2,001 and 5,000 contracts, the LMM Rights fee will be $400 per stock. For issues with an ADV of between 5,001–15,000 contracts, the LMM Rights fee will be $750 per stock. For issues with an ADV of between 15,001 and 100,000 contracts, the LMM Rights fee will be $1,500 per stock and for issues that trade with an ADV in excess of 100,000 contracts per month the LMM Rights fee will be $3,000 per stock. This fee will help offset the costs incurred to provide technology and other infrastructure to support firms operating on the trading platform of the Exchange. This fee will be assessed at the end of each month on each issue that an LMM holds in its LMM appointment. In the event that an LMM has voluntarily delisted an issue prior to the end of the month, the full monthly rate will still apply. LMMs will not incur LMM fees on issues that they trade that are not included in their LMM appointment. An Interim LMM,[9] that is temporarily allocated an issue(s) by the Exchange will not be assessed an LMM rights fee for those issues. This fee will not apply in the event an issue has been designated for ''closing transactions only'' and is subject to delisting by the Exchange.

Per Contract Charges

Options per contract transaction charges will reflect the following rate schedule:

Order type	Rate per contract
LMM	$0.09
NYSE Arca Market Maker	0.16
Broker Dealer Electronic	0.50
Broker Dealer Manual	0.26
Customer Electronic	0.00
Customer Manual	0.00
Firm	0.15

NYSE Arca Market Maker charges will be reduced from $0.26 per contact to $0.16 per contract. A new $0.09 per contract fee will now apply to LMMs on all trades that they transact in issues in which they are the appointed LMM. Previously, LMMs were charged the $0.26 Market Maker rate on all transactions. Certain LMM transactions previously qualified for the Firm transaction fee. Going forward, in the event of the LMM fee conflicts with the Firm transaction fee, the lower rate will always apply. The Exchange will continue to rebate LMM transaction fees for executions that result from the LMM sending Linkage Orders [10] executed on other exchanges. In addition to the aforementioned rebate, the Exchange will continue to credit Market Makers $0.26 per contract for executions that result from the LMM sending Linkage Orders to other exchanges.

Manual broker dealer (''BD'') executions, presently $0.26 per contract, will remain unchanged. Electronic BD executions will now be assessed a transaction fee of $0.50 per contract (instead of $0.51 total charge that was comprised of the $0.26 transaction fee and $0.25 surcharge). BD fees are not assessed on NYSE Arca Market Makers. The BD Surcharge is being eliminated to provide for simplification of rates. Specifically, the old rate schedule required the addition of the Transaction charge and the Surcharge to come up with the total cost; the new rate schedule rolls it up into one category.

In the descriptive language associated with Limit of Fees on Strategy Executions under the Trade Related Charges section of the Schedule, a reference to the ''on line comparison fee'' has been deleted. The on line comparison fee as it applied to these trades was eliminated from the Schedule in a recent filing with the Commission.[11] A reference to the fee was inadvertently left in this section. This change is for housekeeping purposes and makes no substantive change.

Cancellation Fees

The order cancellation fee will be phased out, as it will only be assessed on issues trading on PCX Plus. This fee has been typically assessed by most options exchanges to help mitigate congestion caused by trading participants that have excessive cancellations. NYSE Arca believes its new OX trading platform will be robust enough to handle this traffic, and therefore a fee designed to mitigate incoming order flow is no longer necessary.

The 5% Surcharge Fee

NYSE Arca will no longer assess a 5% Surcharge Fee on an OTP Holder's and OTP Firm's monthly invoice. Eliminating this fee will assist NYSE Arca in being more price competitive with other Exchanges.

Other Changes

Booth Fees on the Options Floor will be consolidated into one rate: $350 per month per booth, regardless of the size or location of the booth. The ACTANT server fee of $100 per month will be eliminated. A $175 Electronic Order Capture (''EOC'') fee will replace the Floor Broker Hand Held device fee. The EOC system will now encompass all order handling functions previously done on the Floor Brokers Hand Held. The $175 fee will apply to each EOC device.

NYSE Arca Equities Regulatory Fees are being removed from the NYSE Arca Options Schedule. These fees were incorporated into the NYSE Arca Equities Fee Schedule as part of a separate filing.[12]

Various other charges that have become obsolete over time will be eliminated. Trade Match tables are no longer used; therefore, the fee associated with them will be deleted. The Exchange will no longer have an Agency Stock Execution Fee nor assess a Market Maker give-up charge, as these fees are no longer applicable in today's marketplace. POETS Workstations, which are used in OTP floor booths, will now include other applications, and will now be called ''Booth Workstations.'' The Standard Report Package is a printed report that the Exchange previously produced for OTP Holders. The information contained in the report is now available

[8] The Exchange notes that a number of institutional and large size transactions sometimes skew average daily volumes. These trades usually clear under firm and market maker clearance accounts. To ensure that LMMs are not disadvantaged by these levels of activity, customer volumes are therefore being used in the calculation of the LMM Rights Fee. For the purposes of calculating this fee, the ADV will be based on a trailing 3-month average.

[9] If an LMM has been relieved of an appointment or resigns or if the allocation otherwise becomes vacant, the Exchange may designate an interim LMM or a Market Maker trading crowd pending the conclusion of a new LMM selection process. The designation of an interim LMM is not a prejudgment of the new LMM selection process. *See* NYSE Arca Rule 6.82(b)(4) (Interim LMMs).

[10] ''Linkage Orders'' are Immediate or Cancel orders routed through the Intermarket Option Linkage containing certain information prescribed in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''). *See* Section 2(16) of the Linkage Plan. *See also* NYSE Arca Rule 6.92(a)(12).

[11] The Exchange amended the Schedule in order to combine a $0.21 transaction fee and a $0.05 comparison fees into one $0.26 transaction fee for Market Maker, Firm and Broker Dealer executions. *See* Securities Exchange Act Release No. 53485 (March 14, 2006), 71 FR 14564 (March 22, 2006) (SR–PCX–2006–15).

[12] SR–NYSEArca–06–43, filed with the Commission on June 30, 2006, was effective upon filing.

electronically and can be accessed free of charge. Therefore, the fee will be eliminated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[13] in general, and with Section 6(b)(4) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among OTP Holders, OTP Firms.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca 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 rule change is subject to Section 19(b)(3)(A)(ii) of the Act [16] and subparagraph (f)(2) of Rule 19b–4 thereunder [17] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] The Exchange removed a reference in the Statutory Basis Section of the filing relating to the applicability of the fees to ''other market participants trading options contracts on certain ETFs'' via telephone. Conversation between Pete Armstrong, NYSE Arca and Tim Fox, Special Counsel, Commission, on August 10, 2006.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

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–NYSEArca–2006–25 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 No. SR–NYSEArca–2006–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE Arca. 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 No. SR–NYSEArca–2006–25 and should be submitted on or before September 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–13729 Filed 8–18–06; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pubic Notice for Waiver of Aeronautical Land-Use Assurance; Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Detroit Metropolitan Wayne County Airport (DTW) from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant, unimproved land owned by the Wayne County Airport Authority (WCAA).

The WCAA has requested from FAA a ''Release from Federal agreement obligated land covenants'' to sell portions of six (6) parcels. The property proposed for release was acquired by the WCAA and FAA Project Numbers: 3–26–0026–1991, 3–26–0026–2292, 3–26–0026–3695, 3–0026–4197, and 3–26–0026–4398.

There are no impacts to the airport by allowing the WCAA to dispose of the vacant property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Project Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Detroit Metropolitan Wayne County Airport, Detroit, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property (portions of Parcels 63 (A&B), 64, 65, 66,

67, and 71) located in Romulus, Wayne County, Michigan, and described as follows:

Description of That Portion of Parcel 63–A Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3. S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 390.64 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 439.59 feet to a point on the Westerly Right-Of-Way Line for relocated Vining Road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 213.94 feet to a point; North 00 degrees 10 minutes 20 seconds East, a distance of 654.13 feet to a point on the center line of the Sexton Kilfoil Drain; thence South 76 degrees 26 minutes 59 seconds East, along the center line of said Sexton Kilfoil Drain, a measured distance of 111.00 feet (described 111.50 feet) to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 443.76 feet to the point of beginning. Containing 1.361 acres, more or less, of land in area.

Description of That Portion of Parcel 63–B Being Released

Part of the South ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 260.00 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a measured distance of 216.11 feet (described 218.66 feet) to a point on the Westerly Right-Of-Way line for relocated Vining Road (120 feet wide), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said pont of beginning North 00 degrees 10 minutes 20 seconds East, a measured distance of 1655.43 feet (described 1656.77 feet) to a point on the Southerly line of the Norfolk and Western Railroad Right-Of-Way (100 feet wide); thence North 73 degrees 24 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-Of-Way, a distance of 136.44 feet to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 1027.60 feet to a point on the center line of the Sexton Kilfoil Drain; thence North 76 degrees 26 minutes 59 seconds West, along the center line of said Sexton Kilfoil Drain, a measured distance of 111.00 feet (described 111.50 feet) to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 654.13 feet to a point on said Westerly Right-Of-Way Line for relocated Vining Road; thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 44.87 feet to the point of beginning. Containing 3.344 acres, more or less, of land in area.

Description of That Portion of Parcel 64 Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 390.64 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 439.59 feet to a point on the Westerly Right-of-Way Line for relocated Vining Road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 00 degrees 10 minutes 20 seconds East, a distance of 1471.36 feet to a point on the Southerly line of the Norfolk and Western Railroad Right-of-Way (100 feet wide); thence North 73 degrees 20 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-of-Way, a distance of 171.28 feet to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 1240.29 feet to a point on said Westerly Right-of-Way Line for relocated Vining Road; thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 324.90 feet to the point of beginning. Containing 5.105 acres, more or less, of land in area.

Description of That Portion of Parcel 65 Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 826.05 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 1275.17 feet to a point on the Westerly Right-of-Way Line for relocated Vining Road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning thence South 25 degrees 54 minutes 51 seconds West, along said right of way line, a distance of 574.08 feet to an angle point is said right-of-way line; thence South 30 degrees 29 minutes 17 seconds West, containing along said right of way line, a distance of 43.82 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 1240.29 feet to a point on the Southerly line of the Norfolk and Western Railroad Right-of-Way (100 feet wide); thence North 73 degrees 24 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-of-Way, a distance of 283.50 feet to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 767.12 feet to the point of beginning. Containing 6.278 acres, more or less, of land in area.

Description of That Portion of Parcel 66 (West ½) Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 826.05 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 1275.17 feet to a point on the Westerly Right-of-Way Line for relocated Vining road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 00 degrees 10 minutes 20 seconds East, a distance of 767.12 feet to a point on the Southerly line of the Norfolk and Western Railroad Right-of-Way (100 feet wide); thence North 73 degrees 24 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-of-Way, a distance of 139.32 feet to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 530.64 feet to a point on said Westerly Right-of-Way Line for relocated Vining Road; thence South 25 degrees 54 minutes 51 seconds West, along said right of way line, a distance of 307.15 feet to the point of beginning. Containing 1.987 acres, more or less, of land in area.

Description of That Portion of Parcel 66 (East ½) Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne

County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S., R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 1092.89 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 1828.61 feet to a point on the Westerly Right-of-Way Line for relocated Vining Road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning South 25 degrees 54 minutes 51 seconds West, along said right of way line, a distance of 307.15 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 530.64 feet to a point on the Southerly line of the Norfolk and Western Railroad Right-of-Way (100 feet wide); thence North 73 degrees 24 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-of-Way, a distance of 139.32 feet to a point; thence South 00 degrees 10 minutes 20 seconds West a distance of 294.16 feet to the point of beginning. Containing 1.263 acres, more or less, of land in the area.

Description of That Portion of Parcel 67 Being Released

Part of the Southwest ¼ of Section 16, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 16, T. 3 S, R. 9 E., and running thence South 89 degrees 48 minutes 20 seconds East, along the South line of said Section 16, a distance of 1092.89 feet to a point; thence North 00 degrees 10 minutes 20 seconds East, a distance of 1828.61 feet to a point on the Westerly Right-of-Way Line for relocated Vining Road (width varies), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 00 degrees 10 minutes 20 seconds East, a distance of 294.16 feet to a point on the Southerly line of the Norfolk and Western Railroad Right-of-Way (100 feet wide); thence North 73 degrees 24 minutes 30 seconds East, along the Southerly line of said Norfolk and Western Railroad Right-of-Way, a distance of 195.67 feet to the point of intersection of said railroad right-of-way line with the Westerly Right-of-Way Line for said relocated Vining Road, said point being distance South 00 degrees 03 minutes 34 seconds West, a measured distance of 105.88 feet (recorded as 104.83 feet), as measured along the East line of said Section 16 and South 73 degrees 24 minutes 30 seconds West a distance of 1361.68 feet, as measured along the Southerly line of said Norfolk and Western Railroad Right-of-Way from the East ¼ corner of said Section 16; thence South 30 degrees 29 minutes 17 seconds West, along said Westerly Right-of-Way Line for relocated Vining Road, a distance of 206.82 feet to an angle point in said line; thence South 25 degrees 54 minutes 51 seconds West, continuing along said right of way line, a distance of 191.01 feet to the point of beginning. Containing 0.596 acres, more or less, of land in area.

Issued in Romulus, Michigan, on July 28, 2006.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–7060 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Detroit Metropolitan Wayne County Airport (DTW) from aeronautical use to non-aeuronautical use and to authorize the sale of the airport property .The proposal consists of a land exchange between the Wayne County Airport Authority (WCAA) and the City of Romulus (City) for the Romulus Department of Public Works (DPW) property.

The Runway 4L/22R construction project at DTW necessitated the WCAA acquire the City DPW site on Goddard Road (Parcel 65). A Memorandum of Understanding between the WCAA and the City provided that the WCAA construct a replacement DPW facility on surplus airport property West of relocated Wayne Road and then exchange this property (portions of seven parcels) for the former City DPW site. The new DPW facility has been constructed and the WCAA/City desire to complete the property exchange.

The WCAA has requested from FAA a ''Release from Federal agreement obligated land covenants'' to complete the land exchange. The property proposed for release was acquired by the WCAA under FAA Project Numbers: 3–26–0026–1991, 3–26–0026–2292, 3–26–0026–3695, 3–26–0026–4197, and 3–26–0026–4398.

There are no impacts to the airport by allowing the WCAA to exchange property with the City. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Project Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Detroit Metropolitan Wayne County Airport, Detroit, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property to be exchanged with the City of Romulus for the new DPW facility located in Romulus, Wayne County, Michigan, and described as follows:

Description of That Portion of Parcel 30 Being Released

Part of the Southeast ¼ of Section 20, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southeast corner of Section 20, T. 3 S., R. 9 E., and running thence North 88 degrees 14 minutes 27 seconds West, along the South line of said Section 20, a distance of 174.09 feet to a point; thence North 01 degree 19 minutes 36 seconds East, a distance of 57.34 feet to the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 01 degree 19 minutes 36 seconds East, a distance of 1243.26 feet to a point; thence South 89 degrees 51 minutes 47 seconds East a distance of 174.12 feet to a point on the

East line of said Section 20; thence South 01 degree 19 minutes 36 seconds West, along the East line of said Section 20, a distance of 936.44 feet to a point on the Westerly Right-Of-Way Line for said relocated Vining Road; thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 355.48 feet to a point; thence North 89 degrees 06 minutes 59 seconds West a distance of 0.87 feet to the point of beginning. Containing 4.359 acres, more or less, of land in area.

Description of That Portion of Parcel 33 Being Released

Part of the Southwest ¼ of Section 21, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 21, T. 3 S., R. 9 E., and running thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 369.09 feet to a point on the Westerly Right-Of-Way line relocated Vining Road (120 feet wide), said point being the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 107.94 feet to a point; thence South 88 degrees 18 minutes 51 seconds East a distance of 60.02 feet to a point on the Westerly Right-Of-Way Line for said relocated Vining Road; thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 123.17 feet to the point of beginning. Containing 0.074 acre, more or less, of land in area.

Description of That Portion of Parcel 36 Being Released

Part of the Southwest ¼ of Section 21, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 21, T. 3 S., R. 9 E., and running thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 477.03 feet to the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 321.18 feet to a point; thence South 88 degrees 18 minutes 51 seconds East a distance of 238.61 feet to a point on the Westerly Right-Of-Way Line for relocated Vining Road (120 feet wide); thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 366.51 feet to a point; thence North 88 degrees 18 minutes 51 seconds West a distance of 60.02 feet tot he point of beginning. Containing 1.101 acres, more or less, of land in area.

Description of That Portion of Parcel 37 Being Released

Part of the Southwest ¼ of Section 21, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 21, T. 3 S., R. 9 E., and running thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 798.21 feet to the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 160.59 feet to a point; thence South 88 degrees 18 minutes 51 seconds East a distance of 327.91 feet to a point on the Westerly Right-Of-Way Line for relocated Vining Road (120 feet wide); thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 183.26 feet to a point; thence North 88 degrees 18 minutes 51 seconds West a distance of 238.61 feet to the point of beginning. Containing 1.044 acres, more or less, of land in area.

Description of That Portion of Parcel 38 Being Released

Part of the Southwest ¼ of Section 21, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 21, T. 3 S., R. 9 E., and running thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 958.80 feet to the point of beginning of the parcel of land herein being described; proceeding thence from said point of beginning North 01 degrees 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 160.59 feet to a point; thence South 88 degrees 18 minutes 51 seconds East a distance of 417.21 feet to a point on the Westerly Right-Of-Way Line for relocated Vining Road (120 feet wide); thence South 30 degrees 29 minutes 17 seconds West, along said right of way line a distance of 183.26 feet to a point; thence North 88 degrees 18 minutes 51 seconds West a distance of 327.91 feet to the point of beginning. Containing 5.105 acres, more or less, of land in area.

Description of That Portion of Parcel 40 Being Released

Part of the Southwest ¼ of Section 21, T. 3 S., R. 9 E., City of Romulus, Wayne County, Michigan and being more particularly described as follows: Commencing at the Southwest corner of Section 21, T. 3 S., R. 9 E., and running thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 1119.39 feet to the point of beginning of the parcel of land herein being described; thence North 01 degree 19 minutes 36 seconds East, along the West line of said Section 21, a distance of 532.88 feet to a point; thence South 89 degrees 12 minutes 20 seconds East a distance of 707.05 feet to a point; thence South 00 degrees 12 minutes 13 seconds East a distance of 21.65 feet to a point on the Westerly Right-Of-Way Line for relocated Vining Road (120 feet wide); thence South 30 degrees 29 minutes 17 seconds West, along said right of way line, a distance of 595.97 feet to a point; thence North 88 degrees 18 minutes 51 seconds West a distance of 417.21 feet to the point of beginning. Containing 7.005 acres, more or less, of land in area.

Issued in Romulus, Michigan, on July 28, 2006.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–7061 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Freeman Municipal Airport, Seymour, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport (a northern portion of Parcel 5, 1.427 acres located northeast of the intersection of First Avenue and G Avenue East, presently used for neither aeronautical or agricultural use) is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel E was acquired in September 27, 1948, under Quit Claim Deed from the United States of America to the Seymour Aviation Commission (recorded in Deed Record 93, pp. 405–419 in the Recorder's Office of Jackson County, Indiana). In accordance with section 47107(h) of title 49, United States Code,

this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The release of this portion of Parcel 5 will allow the Freeman Municipal Airport to sell the land to a manufacturing company currently leasing the adjacent property.

DATES: Comments must be received on or before September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Bobb Beauchamp, Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7364/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at Freeman Municipal Airport, Seymour, Indiana.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Freeman Municipal Airport, Seymour, Indiana. Approval does not constitute a commitment by the FAA to financially assist in disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Des Plaines, Illinois on July 13, 2006.

Larry Ladendorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–7065 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Northeast Alabama Regional Airport, Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Gadsden Airport Authority to waive the requirement that a 26.69-acre parcel of surplus property, located at the Northeast Alabama Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 20, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Gadsden Airport Authority, Gadsden, Alabama at the following address: P.O. Box 961, Gadsden, Alabama 35902–0961.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Gadsden Airport Authority to release 26.69 acres of surplus property at the Northeast Alabama Regional Airport. The property will be purchased by Acemco, which is a manufacturing Company. The property consist of forested lands. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gadsden Airport Authority Office in Gadsden, Alabama.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 06–7057 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Northeast Alabama Regional Airport, Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intenet to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Gadsden Airport Authority to waive the requirement that a 24.4-acre parcel of surplus property, located at the Northeast Alabama Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 20, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Fred Sington, Gadsden Airport Authority at the following address: P.O. Box 961, Gadsden, Alabama 35902–0961.

FOR FURTHER INFORMATION CONTACT: Mr. Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The Faa is reviewing a request by the Gadsden Airport Authority to release 24.4 acres of surplus property at the Northeast Alabama Regional Airport. The property will be purchased by Rigid Building, which is a industrial facility. The property consist of forested lands. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Jackson Airport District Office.

Issued in Jackson, Mississippi, on August 15, 2006.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 06–7058 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Northeast Alabama Regional Airport, Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49 U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Gadsden Airport Authority to waive the requirement that a .98-acre parcel of surplus property, located at the Northeast Alabama Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before September 20, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Gadsden Airport Authority, Gadsden, Alabama at the following address: P.O. Box 961, Gadsden, Alabama 35902–0961.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9886. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Gadsden Airport Authority to release .98 acres of surplus property at the Northeast Alabama Regional Airport. The property will be purchased by Mr. Todd Davis, which is a manufacturing Company. The property consist of excess right of way land. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gadsden Airport Authority Office in Gadsden, Alabama.

Issued in Jackson, Mississippi, on August 15, 2006.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 06–7059 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Watertown Municipal Airport, Watertown, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport property containing 2.3 acres located at the southeast corner of Air Park Drive and Airport Rd. is not needed for aeronautical use as currently identified on the airport Layout Plan.

This parcel was originally acquired through Grant No. AIP–01 in 1989. The parcel was an uneconomic remnant left from reconfiguration of a roadway intersection alongside the edge of the airport. The parcel is segregated from the airport and is not accessible from the air operations area. The land comprising this parcel is, therefore, no longer needed for aeronautical purposes. Income from the sale will be used to improve the airport. There are no impacts to the airport by allowing the airport to dispose of the property.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4363/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Watertown Municipal Airport, Watertown, WI.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Watertown Municipal Airport, Watertown, WI.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN on August 3, 2006.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–7066 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 15, 2006, Vol. 71, No. 50, page 13446–13447. Information is collected to provide services to aircraft in-flight and protection of persons/property on the ground.

DATES: Please submit comments by September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Plans (Domestic/International).

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0026.

Forms(s): FAA Forms 7233–1, 7233–4.

Affected Public: An estimated 300,000 Respondents.

Abstract: Title 49 U.S.C., paragraph 40103(b) authorizes regulations governing the flight of aircraft. 14 CFR part 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft in-flight and protection of persons/property on the ground.

Estimated Annual Burden Hours: An estimated 17,246,826 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance

of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 14, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–7064 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24063]

Disadvantaged Business Enterprises; Western States Guidance for Public Transportation Providers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability and policy guidance.

SUMMARY: This notice announces the Federal Transit Administration's (FTA) implementation of Department of Transportation guidance for participants of the Disadvantaged Business Enterprise (DBE) program. This notice solely concerns FTA implementation procedures applicable to FTA grantees in the states comprising the 9th Federal Judicial Circuit (California, Oregon, Washington, Alaska, Arizona, Idaho, Montana, Nevada, and Hawaii).

DATES: *Effective Date:* This policy takes effect on August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Scheryl Portee, Attorney Advisor, Office of the Chief Counsel, (202) 366–4011 (telephone) and (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

1. Availability of the DOT Guidance and Comments

A copy of the Department of Transportation Guidance for participants of the Disadvantaged Business Enterprise (DBE) program in the affected States and comments received from the public are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the guidance and comments online through the Document Management System (DMS) at: *http://dms.dot.gov.* Enter the docket number 24063 in the search field. 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. An electronic copy of the document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

2. Background

The General Counsel of the Department of Transportation issued guidance concerning the effects of the *Western States Paving Co.* v. *United States and Washington State Department of Transportation,* 407 F. 3d 983 (9th Cir. 2005) in January 2006. On March 23, 2006, FTA published a **Federal Register** notice requesting comments on its implementation of the Department's guidance (56 FR 14775).

The guidance applies to recipients of Federal funds authorized under chapter 53 of Title 49 of the United States Code that are located within the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The Court of Appeals for the 9th Circuit, like other Federal courts that have reviewed the Department of Transportation's DBE program, held that 49 CFR part 26 and the authorizing statute for the DBE program in TEA–21 were constitutional. The court affirmed that Congress had determined that there was a compelling need for the DBE program and part 26 was narrowly tailored. However, the 9th Circuit opinion held that the Washington State Department of Transportation's program for implementing part 26 was not narrowly tailored because the State's evidence of discrimination supporting the use of race conscious measures in the program was inadequate. The January 2006 DOT guidance provides information to recipients in the 9th Circuit about how to address the implications of the court's decision in their programs. This document provides further information on how FTA will administer the DBE program for FTA recipients in light of the court decision and the DOT guidance.

3. Response to Comments

This notice responds to comments regarding the procedures that FTA will employ in its review process for overall goal submissions from grantees in 9th Circuit States for Fiscal Year 2006 (that were due August 1, 2005) and subsequent-year submissions. These procedures concern such matters as race-neutral submissions, the evidence gathering process to determine evidence of discrimination or its effects in grantees' markets, and action plans for disparity/availability studies or other appropriate evidence gathering processes.

FTA solicited comments on two transit-specific issues. FTA considered all comments and statements filed that pertained to these two issues. FTA responses to these comments are included in this section. There is no discussion by FTA of comments that addressed Department-wide DBE issues, the content of the January 2006 DOT guidance, or statutory requirements. These issues were beyond the scope of the FTA notice. FTA received 10 comments in response to the two transit-specific issues we raised. The breakdown among commenter categories follows:

- Nonprofits and special transit providers: 1.
- City and County transit providers: 8.
- Trade association: 1.

Issues

1. Commitment To Conduct Disparity Studies

On the two matters posed for comment regarding FTA's implementation of the *Western States* guidance, there were limited comments on the first issue, that FTA may require recipients to certify that they will conduct or participate in a disparity or availability study. Those that did respond expressed concern that the Regional Civil Rights Office may require this certification.

FTA Response: DBE compliance is a condition of the FTA Master Agreement for all applicable recipients. The Regional Civil Rights Officer, in its review of DBE goal submissions, will work with grantees. In some cases, this will result in grantees having to commit to conducting disparity studies or similar evidence gathering efforts.

The Department's Guidance explicitly states that if a recipient does not currently have sufficient evidence of discrimination or its effects, then an all

race-neutral overall goal for Fiscal Year 2006 would be submitted, along with a statement concerning the absence of adequate evidence and a description of plans to conduct a study or other appropriate evidence gathering process, an action plan, and time lines for its completion. The Regional Civil Rights Office review of the annual goal submissions will determine whether evidence of discrimination or its effects has been provided.

Under part 26, any recipient, wherever located, would submit an all race-neutral overall goal if it concluded, based on the information used in the goal-setting process, that it could meet its overall goal without any use of race conscious measures like contract goals. If a recipient in the 9th Circuit presents an analysis making this showing, then the recipient need not submit an action plan for conducting a disparity study or similar evidence gathering effort. However, if a 9th Circuit recipient's Part 26 goal-setting analysis concludes that race conscious measures would be necessary to meet part of its overall goal and that the recipient does not have sufficient evidence to meet the requirements of the *Western States* decision, the recipient would submit a race-neutral overall goal and an action plan for a disparity study or similar evidence gathering effort. In some cases, it may be necessary for grantees who have already submitted Fiscal Year 2006 goals to rework their submissions to address these matters.

2. Costs of Disparity Studies

A common thread was noted in comments responding to the second issue concerning funding of disparity studies. Commenters stated that additional targeted funding for disparity studies is needed to avoid reducing the current pressing service-related needs. Commenters also noted the financial limitations of small transit operators with respect to conducting such studies.

FTA Response: FTA is aware of the costs involved in conducting disparity studies or availability studies. For recipients in the 9th Circuit states whose goal-setting processes would lead to the use of race conscious means, but for the effects of the *Western States* decision, a disparity study or similar evidence gathering effort is essential, and consistent with DOT's guidance, is a condition of FTA's approval of a race-neutral overall goal. As noted in the General Counsel's DBE guidance, funding of disparity studies is reimbursable from Federal program funds, subject to the availability of those funds and under the FTA statute, this is an eligible capital expense. Recipients that propose to undertake a study may wish to consider joint studies within their locale or participate in studies that will be undertaken by other transit properties in the local market. The Regional Civil Rights Office will review the overall goal submissions and work with recipients to respond to local circumstances and to achieve compliance with the overall objectives of the DBE program.

FTA also suggests that recipients communicate with the State DOT to determine what preparations are being undertaken for a statewide study and whether participation in the study is feasible. Per the guidance, this is occurring and some recipients are complying with the guidance by submission of a race-neutral overall goal and participation in studies currently underway rather than conducting their own study.

3. Group-Specific Goals

One commenter asked about an apparent inconsistency between Part 26 and the DOT guidance concerning group-specific goals.

FTA Response: Part 26 prohibits group-specific goals. Following the completion of a disparity study, a recipient might conclude that it had evidence of discrimination with respect to some, of the groups presumed to be disadvantaged under the rule. In such a case, the recipient should apply for a program waiver under § 26.15 of the rule. This opportunity is not limited to recipients in the 9th Circuit or to FTA grantees. For example, Colorado DOT applied for and was granted such a waiver on the basis of its disparity study for its Fiscal Year 2000 overall goal.

FTA will continue to work with recipients in the 9th Circuit to meet the requirements of a ''narrowly tailored'' DBE program in light of the recent developments in case law.

Dated: August 15, 2006.

Sandra K. Bushue,

Deputy Administrator.

[FR Doc. 06–7053 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–24928; Notice 2]

Continental Tire North America, Grant of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America (Continental) has determined that certain tires it produced in 2004 and 2005 do not comply with S5.5(f) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139, ''New pneumatic radial tires for light vehicles.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on June 14, 2006, in the **Federal Register** (71 FR 34414). NHTSA received no comments.

Affected are a total of approximately 2,627 model 235/55R17 99H Conti Pro Contact replacement tires manufactured during 2004 and 2005. S5.5(f) of FMVSS No. 139 requires the actual number of plies in the tread area to be molded on both sidewalls of each tire. The noncompliant tires are marked on the sidewall ''*Tread Plies 1 Rayon + 2 Steel + 2 Nylon*'' whereas the correct marking should be ''*Tread Plies 1 Rayon + 2 Steel + 1 Nylon*.'' Continental has corrected the problem that caused these errors so that they will not be repeated in future production.

Continental Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Continental Tire states,

> All other sidewall identification markings and safety information are correct. This noncompliant sidewall marking does not affect the safety, performance and durability of the tire; the tires were built as designed.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have

concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Continental's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire. In addition, the tires are certified to meet all the labeling requirements of FMVSS No. 139 and all other informational markings as required by FMVSS No. 139 are present.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Continental's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: August 14, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–13778 Filed 8–18–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–996X]

Reading Blue Mountain and Northern Railroad Company—Abandonment Exemption—in Schuylkill County, PA

Reading Blue Mountain and Northern Railroad Company (RBMN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.2-mile portion of its Minersville Running Track, extending from milepost 7.6 to milepost 8.8, in Norwegian and Cass Townships, in Schuylkill County, PA. The line traverses United States Postal Service Zip Code 17954.

RBMN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 20, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 31, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 11, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RBMN's representative: Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 JFK Blvd., Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RBMN has filed a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 25, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RBMN shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RBMN's filing of a notice of consummation by August 21, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 14, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–13669 Filed 8–18–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 15, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 20, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1834.

Type of Review: Extension.

Title: Revenue Procedure 2003–39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

Description: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under Sec. 1031 of certain exchanges of property pursuant to LKE Programs for Federal income tax purposes.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 8,600 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–13698 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 15, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW. Washington, DC 20220.

Dates: Written comments should be received on or before September 20, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1535–0048.

Type of Review: Revision.

Title: Certificate of Identity.

Form: PD F 385.

Description: The form is used to establish the identity of the owner of U.S. Savings Securities.

Respondents: Individuals and households.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1535–0063.

Type of Review: Revision.

Title: Request for payment of reissue of U.S. Savings Bonds deposited in Safekeeping.

Form: PD F 4239.

Description: Used to request reissue or payment of bonds in safekeeping when custody receipts are not available.

Respondents: Individuals or households.

Estimated Total Burden Hours: 34 hours.

OMB Number: 1535–0100.

Type of Review: Extension.

Title: Affidavit By Individual Surety.

Form: PD F 4095.

Description: Affidavit from individual acting as surety for indemnification agreement for lost, stolen or destroyed securities.

Respondents: Individuals or households.

Estimated Total Burden Hours: 460 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–13737 Filed 8–18–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–52, Deduction for Energy Efficient Commercial Buildings.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Deduction for Energy Efficient Commercial Buildings.

OMB Number: 1545–2004.

Form Number: Notice 2006–52.

Abstract: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of § 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of § 179D of the Code.

Current Actions: The number of respondents and burden hours have been changed to reflect the number of business filers only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 21,767.

Estimated Time per Respondent: 1 hour 40 minutes.

Estimated Total Annual Burden Hours: 3,761.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13701 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2003–67

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2003–67, Notice on Information Reporting for Payments in Lieu of Dividends.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Notice on Information Reporting for Payments in Lieu of Dividends.

Notice Number: 1545–1858.

Abstract: Notice 2003–67 provides guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003. The notice provides rules for brokers to use in determining loanable shares and rules for allocating transferred shares for purposes of determining payments in lieu of dividend reportable to individuals. These rules require brokers to comply with certain recordkeeping requirements to use the favorable rules for determining loanable shares and for allocating transferred shares that may give rise to payments in lieu of dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Average Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13702 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form CT–2

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form CT–2, Employee Representative's Quarterly Railroad Tax Return.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Employee Representative's Quarterly Railroad Tax Return.

OMB Number: 1545–0002.

Form Number: Form CT–2.

Abstract: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. The IRS uses

this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 112.

Estimated Time per Respondent: 1 hour 8 minutes.

Estimated Total Annual Burden Hours: 127.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–13704 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–124312–02]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–124312–02, Golden Parachute Payments.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Golden Parachute Payments.

OMB Number: 1545–1851.

Regulation Project Number: REG–124312–02.

Abstract: These regulations deny a deduction for excess parachute payments. A parachute payment is payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 12,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13705 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(T)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–GS(T), Generation-Skipping Transfer Tax Return for Terminations.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return For Terminations.

OMB Number: 1545–1145.

Form Number: 706–GS(T).

Abstract: Form 706–GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Response: 1 hour 22 minutes.

Estimated Total Annual Burden Hours: 684.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–13708 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5434 and 5434–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

OMB Number: 1545–0951.

Form Number: 5434 and 5434–A.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 38 minutes.

Estimated Total Annual Burden Hours: 38,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–13710 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–43 and Revenue Ruling 97–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

DATES: Written comments should be received on or before October 20, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

OMB Number: 1545–1558.

Revenue Procedure Number: Revenue Procedure 97–43.

Revenue Ruling Number: Revenue Ruling 97–39.

Abstract: Revenue Procedure 97–37 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under regulation section 1.475(c)–1, subject to certain terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance under section 475 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure or revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: 5 hours.

Estimated Total Annual Reporting Burden hours: 1,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–13711 Filed 8–18–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 161

Monday, August 21, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Department of Anthropology Museum at the University of California, Davis, Davis, CA

Correction

In notice document E6–8447 beginning on page 31204 in the issue of Thursday, June 1, 2006, make the following correction:

On page 31204, in the third column, in the sixth line from the bottom of the page, ''510 70, 1,47080, and 3,31090'' should read ''510+/-70, 1,470+/-80, 3,310+/-90''.

[FR Doc. Z6–8447 Filed 8–18–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 21, 2006

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that explain how section 263(a) of the Internal Revenue Code (Code) applies to amounts paid to acquire, produce, or improve tangible property. The proposed regulations clarify and expand the standards in the current regulations under section 263(a), as well as provide some bright-line tests (for example, a 12-month rule for acquisitions and a repair allowance for improvements). The proposed regulations will affect all taxpayers that acquire, produce, or improve tangible property. This document also provides a notice of public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by November 20, 2006. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Tuesday, December 19, 2006, at 10 a.m., must be received by November 28, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–168745–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–168745–03). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kimberly L. Koch, (202) 622–7739; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In recent years, much debate has focused on the extent to which section 263(a) of the Code requires taxpayers to capitalize as an improvement amounts paid to restore property to its former working condition; that is, whether, or the extent to which, the amounts paid to restore or improve the property are capital expenditures or deductible ordinary and necessary repair and maintenance expenses. There has been controversy, for example, regarding what tests to apply for determining capitalization or expensing, how to apply the tests, and the appropriate unit of property with respect to which to apply the tests. On January 20, 2004, the IRS and Treasury Department published Notice 2004–6 (2004–3 I.R.B. 308), announcing an intention to propose regulations providing guidance in this area. The notice identified issues under consideration by the IRS and Treasury Department and invited public comment on whether these or other issues should be addressed in the regulations and, if so, what specific rules and principles should be provided. To respond to various comments and provide a more comprehensive set of rules regarding tangible property, the proposed regulations include the treatment of amounts paid to acquire or produce tangible property.

Explanation of Provisions

I. Introduction

The proposed regulations under section 263(a) of the Code set forth the general statutory principles of capitalization and provide that capital expenditures generally include amounts paid to sell, acquire, produce, or improve tangible property. The proposed regulations, if promulgated as final regulations, would replace current §§ 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3 of the Income Tax Regulations. The treatment of amounts paid to acquire or create intangibles was addressed with the publication of §§ 1.263(a)–4 and 1.263(a)–5 in the **Federal Register** on January 5, 2004 (TD 9107; 69 FR 436).

Certain sections of the current regulations under section 263(a) are proposed to be removed entirely and are not restated in the proposed regulations. Section 1.263(a)–1(c) of the current regulations lists several Code and regulation sections to which the capitalization provisions do not apply. Section 1.263(a)–3 (election to deduct or capitalize certain expenditures) lists several Code sections under which a taxpayer may elect to treat certain capital expenditures as either deductible or deferred expenses, or to treat deductible expenses as capital expenditures. These two sections have not been carried over to the proposed regulations because the lists of items in these sections are outdated. This language is intended to have the same general effect as current §§ 1.263(a)–1(c) and 1.263(a)–3, without citing to specific Code and regulation sections that may have been repealed and without omitting specific Code and regulation sections that may have been added.

Certain portions of § 1.263(a)–2 of the current regulations (examples of capital expenditures) also are not restated in the proposed regulations, or are incorporated into other sections of the proposed regulations. Section 1.263(a)–2(a) of the current regulations (the cost of acquisition of property with a useful life substantially beyond the taxable year) is incorporated into and expanded upon in § 1.263(a)–2 of the proposed regulations (amounts paid to acquire or produce tangible property). Section 1.263(a)–2(b) of the current regulations (amounts expended for securing a copyright and plates) is proposed to be removed because these amounts are now addressed by § 1.263(a)–4(d)(5) and section 263A. The rules in § 1.263(a)–2(c) of the current regulations (the cost of defending or perfecting title to property) are addressed in § 1.263(a)–4(d)(9) of the current regulations with regard to intangibles and in § 1.263(a)–2(d)(2) of the proposed regulations with regard to tangible property. Section 1.263(a)–2(d) of the current regulations (amounts expended for architect's services) is proposed to be removed because those amounts are now included in section 263A. The rules in § 1.263(a)–2(f) and (g) of the current regulations (relating to certain capital contributions) essentially are restated in § 1.263(a)–1(b) of the proposed regulations. Finally, § 1.263(a)–2(h) of the current regulations (the cost of goodwill in connection with the acquisition of the assets of a going concern) is proposed to be removed because this cost is now addressed by § 1.263(a)–4(c)(1)(x).

Taking into account the provisions that are proposed to be removed and other modifications to the current regulations noted above, the remaining guidance in the current regulations is contained in § 1.263(a)–1(a) and (b) of the proposed regulations. Section 1.263(a)–01(a) of the current regulations restates the statutory rules from section 263(a), which are carried over in § 1.263(a)–1(a) of the proposed regulations. The rules in § 1.263(a)–1(b) of the current regulations address

amounts paid to add to the value, or substantially prolong the useful life, of property owned by the taxpayer, and amounts paid to adapt property to a new or different use. They also address the treatment of those capitalized expenditures, for example, as a charge to capital account or basis. These rules are incorporated into and expanded upon in § 1.263(a)–3 of the proposed regulations. The proposed regulations also revise § 1.162–4 of the current regulations (allowing a deduction for the cost of incidental repairs) to provide rules consistent with § 1.263(a)–3 of the proposed regulations (requiring capitalization of amounts paid to improve property).

The proposed regulations do not address amounts paid to acquire or create intangible interests in land, such as easements, life estates, mineral interests, timber rights, zoning variances, or other intangible interests in land. The IRS and Treasury Department request comments on whether these and similar amounts, or certain of these amounts, should be addressed in the final regulations and, if so, what rules should be provided. The proposed regulations also do not address the treatment of software development costs.

II. General Principle of Capitalization

A. Overview

The proposed regulations require capitalization of amounts paid to acquire, produce, or improve tangible real and personal property, including amounts paid to facilitate the acquisition of tangible property. The proposed regulations do not address amounts paid to facilitate an acquisition of a trade or business because those amounts are addressed in § 1.263(a)–5 of the current regulations.

The proposed regulations clarify that they do not change the treatment of any amount that is specifically provided for under any provision of the Code or regulations other than section 162(a) or section 212 and the regulations under those sections. This rule applies regardless of whether that specific provision is more or less favorable to the taxpayer than the treatment in the proposed regulations. Thus, where another section of the Code or regulations prescribes a specific treatment of an amount, the provisions of that section apply and not the rules contained in the proposed regulations. This rule is the same as that contained in §§ 1.263(a)–4(b)(4) and 1.263(a)–5(j) of the current regulations. The proposed regulations, for example, do not preclude taxpayers from deducting the cost of certain depreciable business assets under section 179. On the other hand, the proposed regulations do not exempt taxpayers from applying the uniform capitalization rules under section 263A when applicable, nor do they exempt taxpayers from complying with the timing rules regarding incurring a liability under section 461 (including economic performance).

The rule clarifying that the proposed regulations do not change the treatment of any other amount that is specifically provided for under any other provision of the Code or regulations provides an exception for the treatment of any amount that is specifically provided for under section 162(a) or section 212 or the regulations under those sections. Thus, the proposed regulations override any conflicting provisions in the regulations under sections 162(a) and 212. For this reason, the proposed regulations amend the current rule for deductible repairs under § 1.162–4 to provide that amounts paid for repairs and maintenance to tangible property are deductible if the amounts paid are not required to be capitalized under § 1.263(a)–3 of the proposed regulations. The proposed regulations, however, do not amend or remove any other provisions of the current regulations under section 162(a), including §§ 1.162–6 (regarding professional expenses) and 1.162–12 (regarding certain expenses of farmers). Section 1.162–6 permits a deduction for amounts paid for books, furniture, and professional instruments and equipment, the useful life of which is short, while § 1.162–12 permits a deduction for the cost of ordinary tools of short life or small cost. The rules in current §§ 1.162–6 and 1.162–12 are consistent with the rules in the proposed regulations and are not revised.

B. Amounts Paid To Sell Property

The proposed regulations provide that, except in the case of dealers in property, commissions and other transaction costs paid to facilitate the sale of property generally must be capitalized and treated as a reduction in the amount realized. Dealers in property include taxpayers that maintain and sell inventories and taxpayers that produce property for sale in the ordinary course of business, for example, the home construction business. The language in this section is slightly broader than the current language of § 1.263(a)–2(e), which refers only to commissions paid in selling securities. However, the language in the proposed regulations is consistent with case law that generally treats all transaction costs paid in connection with the sale of any property as capitalized and offset against the amount realized. See, *Wilson* v. *Commissioner*, 49 T.C. 406, 414 (1968); rev'd on other grounds, 412 F.2d 314 (6th Cir. 1969) (''The rule is thoroughly engrained that commissions and similar charges must be treated as capital expenditures which reduce the selling price when gain or loss is computed on the transaction''); *Frick* v. *Commissioner*, T.C. Memo 1983–733, aff'd without opinion, 774 F.2d 1168 (7th Cir. 1985) (''Fees paid in connection with the disposition of real property are capital expenditures and are deductible from the selling price in determining gain or loss on the ultimate disposition''); *Hindes* v. *United States*, 246 F. Supp. 147, 150 (W.D. Tex. 1965); affd. in part, revd. in part on other grounds, 371 F.2d 650 (5th Cir. 1967) (''Fees and expenses paid in connection with the acquisition or disposition of property, real or personal, are capital expenditures, and, in the case of a taxpayer not engaged in the business of buying and selling real estate, are deductible from the selling price in determining gain or loss on the ultimate disposition''). The sales cost rule in the proposed regulations, however, applies only to transaction costs and does not include other amounts that might be paid for the purpose of selling property, such as amounts paid to repair or improve the property in preparation for a sale. The treatment of those amounts is governed by the general rules under § 1.263(a)–3 of the proposed regulations relating to improvements.

III. Amounts Paid To Acquire or Produce Tangible Property

A. In General

The current regulations under section 263(a) require capitalization of amounts paid for the acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year. See § 1.263(a)–2(a) of the current regulations. The proposed regulations are consistent with this rule, but treat amounts paid to construct or erect property as production costs. Specifically, the proposed regulations require capitalization of amounts paid for property having a useful life substantially beyond the taxable year, including land and land improvements, buildings, machinery and equipment, and furniture and fixtures, and a unit of property (as determined under § 1.263(a)–3(d)(2)), having a useful life substantially beyond the taxable year. See § 1.263(a)–2(d) of the proposed

regulations. Thus, § 1.263(a)–2 of the proposed regulations requires capitalization of amounts paid for property that is not itself a unit of property, such as property (not treated as a material or supply under § 1.162–3) that is intended to be used as a component in the repair or improvement of a unit of property. Additionally, the current regulations at § 1.263(a)–1(b) list inventory costs as capital expenditures under § 1.263(a)–1(a). Therefore, § 1.263(a)–2 of the proposed regulations also requires capitalization of amounts paid to acquire real or personal property for resale and to produce real or personal property for sale.

The proposed regulations provide that the terms *amounts paid* and *payment* mean, in the case of a taxpayer using an accrual method of accounting, a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). The definitions of real and tangible personal property are intended to be the same as the definitions used for depreciation purposes as derived from the language in the regulations at § 1.48–1. Thus, for purposes of the proposed regulations, tangible personal property means any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of buildings or structures). See, *Whiteco Indus., Inc.* v. *Commissioner*, 65 T.C. 664 (1975) (applying six factors in determining whether property is an inherently permanent structure). Under the proposed regulations, the definitions of building and structural components are the definitions provided in § 1.48–1(e). The IRS and Treasury Department considered other definitions of real and tangible personal property, including the definitions in the regulations under section 263A(f), but believe that the definitions used for depreciation purposes are the definitions most consistent with the purposes of the proposed regulations.

The definition of produce in § 1.263(a)–2(b)(4) of the proposed regulations is intended to be the same as the definition used for purposes of section 263A(g)(1) and § 1.263A–2(a)(1)(i), except that improvements are separately defined in § 1.263(a)–3 of the proposed regulations. The costs that are required to be capitalized to property produced or to any improvement are the costs that must be capitalized under section 263A. Thus, for example, all direct materials and direct labor, and all indirect costs that directly benefit or are incurred by reason of production/improvement activities are required to be capitalized to the property being produced or improved.

The proposed regulations require taxpayers to capitalize an amount paid to defend or perfect title to tangible property. This rule is consistent with the current regulations at § 1.263(a)–2(c) and parallels the rule in § 1.263(a)–4(d)(9) with regard to intangible property. The proposed regulations also require capitalization of amounts paid to facilitate the acquisition of real or personal property. The IRS and Treasury Department request comments on whether any specific guidance is needed with regard to employee compensation and overhead costs that facilitate the acquisition of tangible property and, if so, what that guidance should provide. The proposed regulations do not address transaction costs related to the production or improvement of tangible property because those costs are subject to capitalization under section 263A.

B. Materials and Supplies

As noted in section II.A. above, the proposed regulations generally do not change the treatment of any amount that is specifically provided for under any provision of the Code or regulations other than section 162(a) or section 212 and the regulations under those sections. However, with regard to section 162(a), the proposed regulations provide an exception for amounts paid for materials and supplies that are properly treated as deductions or deferred expenses, as appropriate, under § 1.162–3. Thus, the proposed regulations do not change the treatment of materials and supplies under § 1.162–3, including property that is treated as a material and supply that is not incidental under Rev. Proc. 2002–28 (2002–1 C.B. 815) (regarding the use of the cash method by certain qualifying small business taxpayers), Rev. Proc. 2002–12 (2002–1 C.B. 374) (regarding smallwares), and Rev. Proc. 2001–10 (2001–1 C.B 272) (regarding inventory of certain qualifying taxpayers).

C. 12-Month Rule

The current regulations under sections 263(a), 446, and 461 require taxpayers to capitalize amounts paid to acquire property having a useful life substantially beyond the taxable year. See §§ 1.263(a)–2(a), 1.446–1(c)(1)(ii), and 1.461–1(a)(2)(i) of the current regulations. Section 1.263(a)–2(d) of the proposed regulations retains this general rule. Some courts have adopted a 12-month rule for determining whether property has a useful life substantially beyond the taxable year. See *Mennuto* v. *Commissioner*, 56 T.C. 910 (1971), acq. (1973–2 C.B. 2); *Zelco, Inc.* v. *Commissioner*, 331 F.2d 418 (1st Cir. 1964); *International Shoe Co.* v. *Commissioner*, 38 B.T.A. 81 (1938). Under the 12-month rule adopted by some courts, a taxpayer may deduct currently an amount paid for a benefit or paid for property having a useful life that does not extend beyond one year. This rule was adopted in the regulations relating to intangibles. See § 1.263(a)–4(f). The proposed regulations provide a similar 12-month rule for amounts paid to acquire or produce certain tangible property.

The proposed regulations generally provide that an amount (including transaction costs) paid for the acquisition or production of a unit of property with an economic useful life of 12 months or less is not a capital expenditure. The unit of property and economic useful life determinations are made under the rules described in § 1.263(a)–3 for improved property. The 12-month rule generally applies unless the taxpayer elects not to apply the 12-month rule, which election may be made with regard to each unit of property that the taxpayer acquires or produces. An election not to apply the 12-month rule may not be revoked. Taxpayers that have elected to use the original tire capitalization method of accounting for the cost of certain tires under Rev. Proc. 2002–27 (2002–1 C.B. 802), must use that method for the original and replacement tires of all their qualifying vehicles. See section 5.01 of Rev. Proc. 2002–27. Therefore, taxpayers that use that method cannot use the 12-month rule provided under the proposed regulations to deduct amounts paid to acquire original or replacement tires.

The proposed regulations clarify the interaction of the 12-month rule with the timing rules contained in section 461 of the Code. Nothing in the proposed regulations is intended to change the application of section 461, including the application of the economic performance rules in section 461(h). This coordination rule is the same as that provided in the regulations under section 263(a) relating to intangibles. See § 1.263(a)–4(f). In the case of a taxpayer using an accrual method of accounting, section 461 requires that an item be incurred before it is taken into account through capitalization or deduction. For example, under § 1.461–1(a)(2), a liability generally is not incurred until the taxable year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance

has occurred with respect to the liability. Thus, the 12-month rule provided by the proposed regulations does not permit an accrual method taxpayer to deduct an amount paid for tangible property if the amount has not been incurred under section 461 (for example, if the taxpayer does not have a fixed liability to acquire the property). The proposed regulations contain examples illustrating the interaction of the 12-month rule with section 461.

The proposed regulations provide that, upon a sale or other disposition, property to which a taxpayer applies the 12-month rule is not treated as a capital asset under section 1221 or as property used in the trade or business under section 1231. Thus, 12-month property is not of a character subject to depreciation and any amount realized upon disposition of 12-month property is ordinary income to the taxpayer.

The IRS and Treasury Department do not believe that it is appropriate to apply the 12-month rule to certain types of property. Thus, the proposed regulations provide that the 12-month rule does not apply to property that is or will be included in property produced for sale or property acquired for resale, improvements to a unit of property, land, or a component of a unit of property.

D. De Minimis Rule

In Notice 2004–6, the IRS and Treasury Department requested comments on whether the regulations should provide a *de minimis* rule. Because the notice refers to the application of section 263(a) to amounts paid to repair, improve, or rehabilitate tangible property, most commentators focused on a *de minimis* rule for the cost of repairs rather than the cost to acquire property. However, one commentator requested that the regulations specifically provide a *de minimis* rule for acquisition costs, but allow taxpayers to continue to use their current method if they have reached a working agreement with their IRS examining agent regarding a *de minimis* rule.

The IRS and Treasury Department recognize that for regulatory or financial accounting purposes, taxpayers often have a policy for deducting an amount paid below a certain dollar threshold for the acquisition of tangible property (*de minimis* rule). For Federal income tax purposes, the taxpayer generally would be required to capitalize the amount paid if the property has a useful life substantially beyond the taxable year. However, in this context some courts have permitted the use of a *de minimis* rule for Federal income tax purposes. See *Union Pacific R.R. Co.* v. *United States*, 524 F.2d 1343 (Ct. Cl. 1975) (permitting the use of the taxpayer's $500 *de minimis* rule, which was in accordance with the Interstate Commerce Commission (ICC) minimum rule and generally accepted accounting principles); *Cincinnati, N.O. & Tex. Pac. Ry.* v. *United States*, 424 F.2d 563 (Ct. Cl. 1970) (same). But see *Alacare Home Health Services, Inc.* v. *Commissioner*, T.C. Memo 2001–149 (disallowing the taxpayer's use of a $500 *de minimis* rule because it distorted income).

The proposed regulations do not include a *de minimis* rule for acquisition costs. However, the IRS and Treasury Department recognize that taxpayers often reach an agreement with IRS examining agents that, as an administrative matter, based on risk analysis and/or materiality, the IRS examining agents do not select certain items for review such as the acquisition of tangible assets with a small cost. This often is referred to by taxpayers and IRS examining agents as a *de minimis* rule. The absence of a *de minimis* rule in the proposed regulations is not intended to change this practice.

The IRS and Treasury Department considered including a *de minimis* rule in the proposed regulations. The *de minimis* rule considered would have provided that taxpayers are not required to capitalize certain *de minimis* amounts paid for the acquisition or production of a unit of property. Under the rule considered, if a taxpayer had written accounting procedures in place treating as an expense on its applicable financial statement (AFS) amounts paid for property costing less than a certain dollar amount, and treated the amounts paid during the taxable year as an expense on its AFS in accordance with those written accounting procedures, the taxpayer would not have been required to capitalize those amounts if they did not exceed a certain dollar threshold. A taxpayer that did not meet these criteria (for example, a taxpayer that did not have an AFS) would not have been required to capitalize amounts paid for a unit of property that did not exceed the established dollar threshold. Because taxpayers without an AFS generally are smaller than taxpayers with an AFS, the dollar threshold for the *de minimis* rule that would have applied to them would have been lower than the threshold for taxpayers with an AFS (although the *de minimis* rule for taxpayers with an AFS also would have been limited to the amount treated as an expense on their AFS). The *de minimis* rule considered by the IRS and Treasury Department would not have applied to inventory property, improvements, land, or a component of a unit of property.

The *de minimis* rule considered also would have provided that property to which a taxpayer applies the *de minimis* rule is treated upon sale or disposition similar to section 179 property. Thus, *de minimis* property would have been property of a character subject to depreciation and amounts paid that were not capitalized under the *de minimis* rule would have been treated as amortization subject to recapture under section 1245. Thus, gain on disposition of the property would have been ordinary income to the taxpayer to the extent of the amount treated as amortization for purposes of section 1245.

The IRS and Treasury Department decided to not include a *de minimis* rule in the proposed regulations but instead to request comments on whether such a rule should be included in the final regulations or whether to continue to rely on the current administrative practice of IRS examining agents. Therefore, the IRS and Treasury Department request comments on whether a *de minimis* rule for acquisition costs should be included in the final regulations, and, if so, whether the *de minimis* rule should be the rule described above and what dollar thresholds are appropriate.

The IRS and Treasury Department also request comments on the scope of costs that should be included in a *de minimis* rule if one is provided in the final regulations and on the character of *de minimis* rule property. For example, the *de minimis* rule considered by the IRS and Treasury Department would have applied to the aggregate of amounts paid for the acquisition or production (including any amounts paid to facilitate the acquisition or production) of a unit of property and including amounts paid for improvements prior to the unit of property being placed in service. If a *de minimis* rule should be provided in the final regulations, the IRS and Treasury Department request comments on what, if any, type of rule should be provided to prevent a distortion of income when taxpayers acquire a large number of assets, each of which individually is within the *de minimis* rule (for example, the purchase by a taxpayer of 2,000 personal computers).

If a *de minimis* rule for acquisition costs should be provided in the final regulations, the IRS and Treasury Department request comments on whether the rule should permit IRS examining agents and taxpayers to agree to the use of higher *de minimis* thresholds on the basis of materiality

and risk analysis and, if so, under what circumstances a higher threshold should be allowed. The IRS and Treasury Department also request comments on whether, if a *de minimis* rule should be provided in the final regulations, changes to begin using a *de minimis* rule or changes to a higher dollar amount within a *de minimis* rule should be treated as changes in a method of accounting.

E. Recovery of Costs When Property Is Used in a Repair

As noted in section III.A. of this preamble, § 1.263(a)–2 of the proposed regulations generally requires capitalization of amounts paid for the acquisition or production of property having a useful life substantially beyond the taxable year. Thus, § 1.263(a)–2(d) of the proposed regulations applies to property that is not itself a unit of property, such as property (not treated as a material or supply under § 1.162–3) that is intended to be used as a component in the repair or improvement of a unit of property. It must be determined whether the subsequent use of the component property results in an improvement to the unit of property under § 1.263(a)–3 or an otherwise deductible repair or maintenance cost under § 1.162–4. Even if the subsequent use of the component is an otherwise deductible expense under § 1.162–4, the amount paid nonetheless may be required to be capitalized. For example, it must be determined whether the amount paid for the component property is required to be capitalized under section 263A as an indirect cost that directly benefits or is incurred by reason of property produced or acquired for resale. The proposed regulations illustrate this concept in an example of a manufacturer that replaces one window in a building. The taxpayer initially must capitalize under § 1.263(a)–2(d) amounts paid to acquire the window. The replacement of the window subsequently is determined to be a repair to the building rather than an improvement. Amounts paid for the repair (or an allocable portion thereof) must then be capitalized under section 263A to the inventory that the taxpayer produces to the extent that the repair directly benefits or is incurred by reason of the taxpayer's production activities.

IV. Amounts Paid To Improve Tangible Property

A. In General

In response to Notice 2004–6, the IRS and Treasury Department received several comments on the issues that should be addressed in the proposed regulations to provide guidance on amounts paid to repair, improve, and rehabilitate tangible property. These comments have been taken into account in drafting § 1.263(a)–3 of the proposed regulations. That section addresses amounts paid to improve tangible property and includes the following provisions: (1) Rules for determining the appropriate unit of property to which the improvement provisions apply; (2) general rules for improvements; (3) rules for determining whether an amount paid materially increases the value of the unit of property; (4) rules for determining whether an amount paid restores the unit of property; and (5) an optional repair allowance method.

B. Unit of Property Rules

1. In General

A threshold issue in applying the improvement rules under § 1.263(a)–3 of the proposed regulations is determining the appropriate unit of property to which the rules should be applied. For example, to determine whether an amount paid materially increases the value of property, it is necessary to know what property is at issue. The smaller the unit of property, the more likely it is that amounts paid in connection with that unit of property will materially increase the value of, or restore, the property. Taxpayers and the IRS frequently disagree on the unit of property to which the capitalization rules should be applied. Thus, the unit of property rules in the proposed regulations are intended to provide guidance in determining whether an amount paid improves the unit of property under § 1.263(a)–3. The unit of property rules also apply for purposes of § 1.263(a)–1 of the proposed regulations (which references the rules in §§ 1.263(a)–2 and 1.263(a)–3 of the proposed regulations) and § 1.263(a)–2 of the proposed regulations (for example, with regard to the 12-month rule). The unit of property rules in the proposed regulations apply only for purposes of section 263(a) and §§ 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3 of the proposed regulations, and not any other Code or regulation section. For example, no inference is intended that these unit of property rules have any application for section 263A(f) interest capitalization purposes.

The current regulations under section 263(a) do not provide any guidance on determining the appropriate unit of property. Some courts have addressed the unit of property issue under section 263(a), but their holdings are based on the particular facts of each case and do not contain rules that are generally applicable for purposes of section 263(a). See, *FedEx Corp.* v. *United States,* 291 F. Supp. 2d 699 (W.D. Tenn. 2003), aff'd, 412 F.3d 617 (6th Cir. 2005) (concluding that an aircraft, and not the aircraft engine, was the appropriate unit of property); *Smith* v. *Commissioner,* 300 F.3d 1023 (9th Cir. 2002) (concluding that an aluminum reduction cell, rather than entire cell line, was the appropriate unit of property); *Ingram Industries, Inc.* v. *Commissioner,* T.C. Memo 2000–323 (concluding that a towboat, and not the towboat engine, was the appropriate unit of property); *LaSalle Trucking Co.* v. *Commissioner,* T.C. Memo 1963–274 (concluding that truck engines, tanks, and cabs were each separate units of property).

In *FedEx,* the court ruled on whether an aircraft engine or the entire aircraft was the appropriate unit of property for determining whether the costs of engine shop visits (ESVs) must be treated as capital expenditures. Relying on the opinions in *Ingram* and *Smith,* the court concluded that the following four factors were relevant in determining the appropriate unit of property: (1) Whether the taxpayer and the industry treat the component part as a part of a larger unit of property for regulatory, market, management, or accounting purposes; (2) whether the economic useful life of the component part is coextensive with the economic useful life of the larger unit of property; (3) whether the larger unit of property and the smaller unit of property can function without each other; and (4) whether the component part can be and is maintained while affixed to the larger unit of property. Applying these factors to aircraft engines, the court concluded that the engines should not be considered a unit of property separate and apart from the airplane.

In Notice 2004–6, the IRS and Treasury Department requested comments on the relevance of various unit of property factors derived from *FedEx* and other cases that addressed the unit of property issue. The factors listed in Notice 2004–6 included: (1) Whether the property is manufactured, marketed, or purchased separately; (2) whether the property is treated as a separate unit by a regulatory agency, in industry practice, or by the taxpayer in its books and records; (3) whether the property is designed to be easily removed from a larger assembly, is regularly or periodically replaced, or is one of a fungible set of interchangeable or rotable assets; (4) whether the property must be removed from a larger assembly to be fixed or improved; (5)

whether the property has a different economic life than the larger assembly; (6) whether the property is subject to a separate warranty; (7) whether the property serves a discrete purpose or functions independently from a larger assembly; or (8) whether the property serves a dual purpose function.

The IRS and Treasury Department received nine comments on the unit of property issue, four of which specifically recommended that the proposed regulations adopt the factors used by the court in *FedEx.* These factors essentially are contained in factors 1, 2, 4, 5, and 7 of Notice 2004–6. Several of the factors listed in Notice 2004–6 have been incorporated into the proposed regulations. However, the IRS and Treasury Department determined that some factors were not relevant for certain types of property. For example, the factors listed in Notice 2004–6 primarily derive from case law that addresses tangible personal property; therefore, the factors were not as helpful in determining the appropriate unit of property for real property, such as land. Further, some types of property lend themselves to specific unit of property rules, such as buildings and property owned by taxpayers in a regulated industry. The IRS and Treasury Department believe that the administrative burden associated with determining the appropriate unit of property can be reduced for both the IRS and taxpayers by identifying specific rules reflecting an approach appropriate for the taxpayer's industry and the type of property at issue. Therefore, the proposed regulations provide different unit of property rules for four categories of property, rather than prescribing one rule for all types of property.

The unit of property rules in the proposed regulations apply to all real and personal property other than network assets. For purposes of the unit of property rules, *network assets* means railroad track, oil and gas pipelines, water and sewage pipelines, power transmission and distribution lines, and telephone and cable lines that are owned or leased by taxpayers in each of those respective industries. Network assets include, for example, trunk and feeder lines, pole lines, and buried conduit. They do not include property that would be included as a structural component of a building under § 1.263(a)–3(d)(2)(iv) of the proposed regulations, nor do they include separate property that is adjacent to, but not part of a network asset, such as bridges, culverts, or tunnels. The proposed regulations do not affect current guidance that addresses the unit of property or capitalization rules for network assets, such as Rev. Proc. 2001–46 (2001–2 C.B. 263) (track maintenance allowance method for Class I railroads); Rev. Proc. 2002–65 (2002–2 C.B. 700) (track maintenance allowance method for Class II and III railroads); and Rev. Proc. 2003–63 (2003–2 C.B. 304) (safe harbor unit of property rule for cable television distribution systems). The IRS and Treasury Department request comments on the relevant rules for determining the appropriate unit of property for network assets. Additionally, the IRS and Treasury Department request comments on whether to include rules for network assets in final regulations, or whether to develop for network assets industry-specific guidance that is similar to the above referenced revenue procedures.

With the exception of network assets, the four categories of property in the proposed regulations are intended to cover all real and personal property. In addition to the four categories of property, the unit of property rules provide for an initial unit of property determination, which, except with regard to buildings and structural components, is made prior to categorizing the property. The initial unit of property determination is based on the functional interdependence test in § 1.263A–10(a)(2), relating to the capitalization of interest. The initial unit of property determination is intended to be a common-sense approach to defining the largest possible unit of property as a starting point for analyzing the rules under one of the four relevant unit of property categories. After the initial unit of property is determined, the additional unit of property rules are intended to result in a determination that either confirms the initial unit of property as the unit of property, or that separates one or more components of the initial unit of property into separate units of property.

Some commentators suggested that the functional interdependence test under § 1.263A–10(a)(2) regarding interest capitalization should be the sole test for determining the appropriate unit of property. The IRS and Treasury Department believe that the functional interdependence test is a relevant, but not dispositive factor. The purpose of that test under § 1.263A–10(a)(2) is to calculate the appropriate unit of property for determining the accumulated production expenditures at the beginning and end of the production period. The preamble that accompanied the promulgation of § 1.263A–10 discusses the reasoning for adopting a broad formulation of the unit of property definition and states that ''this concept of single property may differ from the concept of single or separate property that taxpayers use for other purposes (*e.g.*, for computing amounts of depreciation deductions or separately tracking the bases of assets).'' TD 8584 (59 FR 67,187; 1995–1 C.B. 20, 25; Dec. 29, 1994).

In contrast to the unit of property rules in § 1.263A–10(a)(2), the purpose of the unit of property rules under section 263(a) is to provide a starting point for determining whether an amount paid materially increases the value of, or restores, the unit of property. Thus, § 1.263A–10(a)(2) has a different purpose than the proposed regulations under section 263(a). Further, in determining the appropriate unit of property for purposes of section 263(a), the functional interdependence test does not always produce appropriate results. For example, a taxpayer might argue that application of that test results in an entire complex of structures and machinery, such as an entire power plant, being treated as a single unit of property. The IRS and Treasury Department do not believe that result is correct for purposes of section 263(a).

After the initial unit of property determination is made, the unit of property analysis continues with determining the appropriate category of property and applying the rules in that category. The proposed regulations provide specific rules for four categories of property: (1) Property owned by taxpayers in a regulated industry; (2) buildings and structural components; (3) other personal property; and (4) other real property. The unit of property determination made under the applicable category is then subject to an additional rule in § 1.263(a)-3(d)(2)(vii) regarding treatment for other Federal income tax purposes. The rules for each of the four categories are explained below.

2. Category I: Taxpayers in Regulated Industries

The first unit of property category in the proposed regulations is property owned by taxpayers in a regulated industry. The proposed regulations provide that if the taxpayer is in an industry for which a Federal regulator has a uniform system of accounts (USOA) identifying a particular unit of property, the taxpayer must use the same unit of property for Federal income tax purposes, regardless of whether the taxpayer is subject to the regulatory accounting rules of the Federal regulator and regardless of whether the property is particular to that industry. This rule derives from one of the factors cited by the court in *FedEx*

for determining the appropriate unit of property—whether the taxpayer and the industry treat the component part as part of the larger unit of property for regulatory, market, management, or accounting purposes. Thus, this rule ties into the regulatory accounting element of the *FedEx* factor, as well as the general concept of industry practice. The IRS and Treasury Department are aware of three Federal regulators that provide a USOA: (1) The Federal Energy Regulatory Commission (FERC); (2) the Federal Communications Commission (FCC); and (3) the Surface Transportation Board (STB). Accordingly, this unit of property category applies to taxpayers such as power companies, telecommunications companies, and railroads.

The IRS and Treasury Department determined that the regulatory accounting rule should be applied similarly to all taxpayers in industries for which a Federal regulator provides a USOA, regardless of whether the taxpayer is subject to the regulatory accounting rules of the Federal regulator. This rule is consistent with the general standard of using industry practice to determine the appropriate unit of property. Further, it results in all taxpayers within a specific industry being treated the same for Federal income tax purposes, without regard to whether a particular taxpayer is subject to the accounting rules of the Federal regulator. The rule is limited to the regulator's USOA and does not apply to other Federal regulatory rules, such as rules concerning safety or health. The proposed regulations apply only to USOA provided by Federal regulators and do not apply to USOA issued by any state or local agencies. Rules of state and local agencies may be different than Federal regulatory rules and can vary widely within an industry depending on the taxpayer's location.

Four of the commentators on this aspect of Notice 2004–6 recommended adopting the four factors cited in *FedEx*, from which the regulated industry rule was derived. None of the commentators specifically objected to a regulatory accounting rule, although one commentator suggested that where cost recovery is determined for non-tax purposes by a Federal or state agency, the regulations should provide a special election that may be made on an annual basis under which the taxpayer may use the same unit of property for tax purposes as it must use for regulatory purposes. The IRS and Treasury Department believe the unit of property inquiry should result in one clear determination that will be used consistently by the taxpayer unless the underlying facts change and, therefore, do not believe an annual election is appropriate.

3. Category II: Buildings and Structural Components

In general, a building and its structural components must be treated as one unit of property. This rule is based on the definitions of *building* and *structural component* in the regulations under section 48. The repair allowance regulations under the Class Life Asset Depreciation Range (CLADR) system also provide that a building and its structural components generally are a single unit of property. See § 1.167(a)–11(d)(2)(vi). The IRS and Treasury Department believe that these definitions are useful in determining the appropriate unit of property for buildings and structural components. One commentator specifically requested that the proposed regulations use the definition of building under § 1.48–1(e) to determine a unit of property. The proposed regulations rely on the definition of building under § 1.48–1(e). Property located inside a building that is not a structural component of the building must be analyzed under one of the other three unit of property categories; for example, machinery and equipment inside a factory must be analyzed under Category III (the other personal property category).

This Category II is the only category to which the initial unit of property determination does not apply. Applying the functional interdependence test to a building would raise issues in cases where certain floors or portions of a building are placed in service independently of another. The IRS and Treasury Department believe that, unless the additional rule in § 1.263(a)–3(d)(2)(vii) of the proposed regulations (regarding treatment for other Federal income tax purposes) applies to require a component of a building to be treated as a separate unit of property, the building and its structural components should be the unit of property. The IRS and Treasury Department recognize, however, that it is not always appropriate to treat the entire building as the unit of property. For example, a taxpayer who owns a unit in a condominium building, whether the unit is used for personal or investment purposes, should not treat the entire building as the unit of property. Therefore, the IRS and Treasury request comments on how the unit of property rules should apply to condominiums, cooperatives, and similar types of property.

4. Category III: Other Personal Property

The unit of property determination for personal property not included in Category I (taxpayers in a regulated industry) is a facts and circumstances test, based on four exclusive factors, none of which is dispositive or weighs more heavily than the others.

a. Factor 1: Marketplace Treatment Factor

The first exclusive factor is whether the component is (1) marketed separately to or acquired or leased separately by the taxpayer (from a party other than the seller/lessor of the property of which the component is a part) at the time it is initially acquired or leased; (2) subject to a separate warranty contract (from a party other than the seller/lessor of the property of which the component is a part); (3) subject to a separate maintenance manual or written maintenance policy; (4) appraised separately; or (5) sold or leased separately by the taxpayer to another party. This factor contains a number of items intended to determine the treatment in the marketplace of the component as a separate unit of property.

Whether the component is acquired separately was a factor addressed by the courts in *FedEx* and *Ingram*, and is also part of the CLADR repair allowance regulations under section 167 and the unit of property determination for interest capitalization in § 1.263A–10. In *FedEx*, the court discussed this issue in the context of whether the taxpayer and the industry treat the component part as part of the larger unit of property for regulatory, market, management, or accounting purposes. In finding that the aircraft engines were not purchased separately, the court relied on the fact that the engines and aircraft were designed to be compatible and were generally acquired by the taxpayer at the same time. The court disregarded the fact that the taxpayer purchased the engines and airframes from different sellers when the aircraft were initially acquired. The IRS and Treasury Department believe that the acquisition of a component from a different seller at the time the larger property is acquired should be a relevant factor, and that the same rule should apply if the taxpayer leases the component from a different party than the seller of the larger property.

The IRS and Treasury Department recognize that this factor may produce different results depending on whether the property is new or used. When a taxpayer acquires or leases used property, it is possible that items that

were separate units of property when purchased new will be treated as one unit of property because the initial purchaser has assembled the units into one functional item that it sells or leases. The IRS and Treasury Department considered whether it was appropriate to have a factor that could treat new and used property differently, and decided that the difference reasonably reflects the substance of the transactions—where the taxpayer acquires or leases a component from a different party from whom it acquires or leases the larger property, the taxpayer typically is conducting different, but related, transactions with separately negotiated terms.

Whether the component is subject to a separate warranty contract, maintenance manual, or written maintenance policy was cited as a factor in *FedEx* and is adopted as part of the marketplace treatment factor in the proposed regulations. The warranty contract factor applies only to a warranty that is provided by a party other than the seller/lessor of the larger property. It is not intended to apply to a warranty provided by the sellor/lessor that may contain separate warranties (for example, for different time periods) on various components of the larger property. Whether the property is manufactured separately was a possible factor cited in Notice 2004–6. The proposed regulations do not specifically adopt this factor because components that are subject to a separate warranty or maintenance procedures also are likely to be manufactured separately. The *FedEx* case used as a factor whether the component was appraised or valued separately and the CLADR repair allowance regulations under section 167 addressed whether the component was sold separately to another party. The proposed regulations adopt these tests as part of the marketplace factor.

The IRS and Treasury Department believe that it is important that all the criteria in this factor be taken into account together when weighing this factor with the other three factors. Some criteria may be stronger indicators warranting treatment of the component as a separate unit of property than others. The IRS and Treasury Department acknowledge that several of the criteria within this factor do not work well for property produced by the taxpayer, and request comments regarding how and whether a marketplace factor should apply to self-constructed property.

b. Factor 2: Industry Practice and Financial Accounting Factor

The second exclusive factor in this Category III is whether the component is treated as a separate unit of property in industry practice or by the taxpayer in its books and records. This factor was cited by the court in *FedEx.* The IRS and Treasury Department believe that the taxpayer's treatment of the component as separate in its books and records is a relevant factor in determining whether the component should be treated as a separate unit of property in the proposed regulations. In particular, if the taxpayer's books and records assign different economic useful lives to the component and the larger property, this factor would weigh heavily toward treating the component as a separate unit of property.

The IRS and Treasury Department considered whether to use as a factor whether the component has a different economic useful life than the property of which it is a part. This factor was cited by the courts in *Smith, Ingram,* and *FedEx.* However, for this factor to be useful, the regulations would need to define economic useful life. The proposed regulations at § 1.263(a)–3(f) (with regard to restoration of a unit of property) provide a definition of economic useful life, which has different meanings depending on whether a taxpayer has an AFS. If the unit of property rules adopted this definition, the economic useful life test under this factor would produce different results depending on whether the taxpayer has an AFS. These different results are not justified in this context. Further, a taxpayer's treatment of the component in its books and records under this Factor 2 includes any useful life determinations of the component and the property of which the component is a part in the books and records. Therefore, the economic useful life factor was not specifically adopted as a separate factor.

c. Factor 3: Rotable Part Factor

The third exclusive factor in the other personal property category is whether the taxpayer treats the component as a rotable part. A rotable part is defined as a part that is removeable from property, repaired or improved, and either immediately reinstalled on other property or stored for later installation. This factor was cited by the courts in *Smith* and *LaSalle*. The court in *FedEx* ignored this factor, but considered as a separate concept whether the component can be and is maintained while affixed to the larger unit. The IRS and Treasury Department considered this separate concept as well, but believe that the rotable part factor incorporates this concept from *FedEx.* As the examples in the proposed regulations illustrate, this factor focuses on the particular taxpayer's treatment of the property as a rotable part in determining whether the rotable is a separate unit of property. Therefore, for example, if the rotable part is a separate unit of property to the taxpayer and the taxpayer incorporates the rotable into other property for resale, the rotable part will not necessarily be a separate unit of property to the purchaser.

Two commentators stated that the treatment of a component as a rotable part is of limited or no relevance. While treatment of minor parts as rotable would not weigh heavily toward separate unit of property treatment, the IRS and Treasury Department believe that the treatment of major components as rotable is a relevant factor in determining whether a component is a separate unit of property, particularly when the economic useful life of the larger property is limited by the expected useful life of the rotable part. Many taxpayers do not maintain an inventory of rotable spares for their major components. Although it is understood that the purpose for maintaining an inventory of rotables is to minimize the time that the larger property is out of service, treatment of a major component as a rotable has consequences that tend to be indicative of a separate unit of property. For example, in the case of a taxpayer that does not maintain an inventory of rotable spare parts, if a major component of the larger property breaks down, then the entire larger property must be taken out of service while the major component is being repaired. This is indicative of the larger property and the component collectively being treated as one unit of property. Conversely, a taxpayer that does maintain an inventory of rotable spare parts for a major component is able to continue to use the larger property without regard to the time required to repair the broken down component. In this instance, the IRS and Treasury Department believe that continued use of the larger property is indicative of separate unit of property treatment for the rotable part. In addition, rotables being depreciated as rotable spare parts is indicative of separate treatment because the components are depreciated separately from the larger property.

In the request for comments, Notice 2004–6 combined several other factors with the rotables factor, including whether a component is designed to be easily removed from a larger assembly,

is regularly or periodically replaced, or is one of a fungible set of interchangeable assets. These factors are broader than the rotables factor in the proposed regulations and would sweep in many minor components that rarely, if ever, would be appropriately considered a separate unit of property. Further, these factors are duplicative of the rotables part factor, because a rotable generally meets all of these factors. The IRS and Treasury Department believe that these factors are not more helpful in determining whether a component is a separate unit of property than the rotables factor described in the proposed regulations. Therefore, the proposed regulations do not include these other factors.

d. Factor 4: Function Factor

The fourth and final factor in Category III is whether the property of which the component is a part generally functions for its intended use without the component property. This factor was cited by the court in *FedEx* and is similar to the discrete purpose test under the CLADR repair allowance regulations. It is also similar to the functional interdependence test under § 1.263A–10(a)(2) and the rules in these proposed regulations regarding the initial unit of property determination. As noted in the discussion of the initial unit of property determination, the IRS and Treasury Department agree with commentators that the functional interdependence test is a relevant, although not dispositive, factor in the unit of property analysis. Although the proposed regulations use the functional interdependence test to determine the initial unit of property, the functional interdependence test in that context is merely a starting point in determining the appropriate unit of property, rather than a specific factor to be considered. Providing this version of the functional interdependence test as a specific factor gives appropriate weight to that test in the unit of property analysis for other personal property.

5. Category IV: Other Real Property

The unit of property determination for real property not included in Category I or II is based on a facts and circumstances test. The property subject to this category is primarily land and land improvements owned or leased by taxpayers not in a regulated industry. This category does not list specific factors because land and land improvements are such unique assets that specific factors cannot uniformly provide appropriate results. Thus, the unit of property determination for property in this category may be based on some, all, or none of the factors listed in Category III for personal property, or may be based on other factors. The IRS and Treasury Department request comments on whether additional guidance is needed for this category of property and, if so, what unit of property guidance would be appropriate.

6. Additional Rule for Unit of Property

After determining the initial unit of property and applying the unit of property rules under the appropriate category, the additional rule in § 1.263(a)–3(d)(2)(vii) must be applied. Under this rule, if a taxpayer properly treats a component as a separate unit of property for any Federal income tax purpose, the taxpayer must treat the component as a separate unit of property for purposes of § 1.263(a)–3. The purpose of this rule is to prevent taxpayers from taking inconsistent positions by arguing that a component of property is a unit of property for one tax purpose and that it is not a separate unit of property for capitalization purposes. For example, if a taxpayer does a cost segregation study on a building and properly identifies separate section 1245 property, the taxpayer must treat that separate property as the unit of property for capitalization purposes.

As a further example, if a taxpayer properly recognizes a loss under section 165, or under another applicable provision, from a retirement of a component of property or from the worthlessness or abandonment of a component of property, the taxpayer must treat the component as a separate unit of property. A loss arising under another applicable provision in this context includes a loss arising under (1) § 1.167(a)–8 or 1.167(a)–11, as applicable, from a retirement of a component of property if the component is not subject to section 168 (MACRS property) or former section 168 (ACRS property); (2) § 1.167(a)–8(a) from a retirement of a component of property if the component is MACRS or ACRS property (applying § 1.167(a)–8(a) as though the retirement is a normal retirement from a single asset account) unless the component is a structural component or the component is in a mass asset account (ACRS property) or a general asset account (MACRS property); or (3) § 1.168(i)–1(e) from the disposition of a component of property if the component is MACRS property and in a general asset account. No inference is intended that this rule in the proposed regulations requires or allows taxpayers that are using a unit of property for purposes of the proposed regulations to use the same unit of property for purposes of any Code or regulation section other than section 263(a) and §§ 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3 of the proposed regulations.

This rule is intended to prevent taxpayers from taking a loss deduction on a component of a unit of property, and then deducting the cost of the replaced component as a repair. The application of this rule results in the replacement component being treated as a separate unit of property, thus requiring capitalization under § 1.263(a)–2 of amounts paid to acquire or produce the replacement component. The IRS and Treasury Department believe that taxpayers must be consistent in the treatment of a unit of property for capitalization (other than interest capitalization), depreciation, and loss deduction purposes. The IRS and Treasury Department recognize that the language of this consistency rule is very broad, and request comments regarding circumstances in which this rule should not apply.

V. Improvements in General

Section 1.263(a)–1(b) of the current regulations provides that an amount must be capitalized if it (1) adds to the value, or substantially prolongs the useful life, of property owned by the taxpayer, or (2) adapts the property to a new or different use. Notice 2004–6 requested comments on what general principles of capitalization should apply to amounts paid to repair or improve tangible property. Commentators were almost unanimous in their suggestion that the current principles of value, useful life, and new or different use be retained. The IRS and Treasury Department agree with the commentators that the current guidelines generally are appropriate. However, the current regulations require a subjective inquiry into the application of the particular facts at issue, which often results in disagreements between taxpayers and the IRS. Accordingly, the proposed regulations attempt to clarify and expand the standards in the current regulations by setting forth rules to determine whether there has been a material increase in value (including adapting property to a new or different use) and to determine whether there has been a restoration of property (the useful life rules). In addition, the proposed regulations provide objective rules for improvements in an optional repair allowance method.

The proposed regulations generally provide that a taxpayer must capitalize the aggregate of related amounts paid that improve a unit of property, whether

the improvements are made by the taxpayer or a third party. The aggregate of related amounts does not encompass otherwise deductible repair costs unless those costs directly benefit or are incurred by reason of a capital improvement. Instead, the aggregation language is intended to include amounts paid for an entire project, including removal costs and other project costs, regardless of whether amounts are paid to more than one party or whether the work spans more than one taxable year. The proposed regulations do not affect the treatment of amounts paid to retire and remove a unit of property in connection with the installation or production of a replacement asset. See Rev. Rul. 2000–7 (2000–1 C.B. 712).

Several commentators suggested that the proposed regulations provide that the relevant distinction between capital improvements and deductible repairs is whether the amounts were paid to put the property in ordinarily efficient operating condition or to keep the property in ordinarily efficient operating condition. See *Estate of Walling* v. *Commissioner*, 373 F.2d 190 (3d Cir. 1967); *Illinois Merchants Trust Co.* v. *Commissioner*, 4 B.T.A. 103 (1926), acq. (V–2 C.B. 2); Rev. Rul. 2001–4 (2001–1 C.B. 295). The improvement rules in the proposed regulations are consistent with the put versus keep standard, to the extent that standard is relevant. An amount paid may be a capital expenditure even if it does not put the property in ordinarily efficient operating condition because not all repair or improvement costs affect the functionality of the property. Thus, amounts paid that keep property in ordinarily efficient operating condition are not necessarily deductible repair costs, particularly if the useful life is extended. On the other hand, amounts that put property in ordinarily efficient operating condition are likely to be amounts paid prior to the property's being placed in service or to ameliorate a pre-existing condition or defect. Amounts paid in these later situations would be capital expenditures under either the value rule or the restoration rule in the proposed regulations.

Some commentators suggested that the frequency of the expenditure should be considered, noting that an expenditure being regularly incurred on a cyclical basis should be a strong indication of deductible maintenance. The IRS and Treasury Department considered this comment but concluded that the frequency of the expenditure was too vague a standard to be administrable. Further, the IRS and Treasury Department believe that the proposed regulations provide appropriate guidance on cyclical maintenance by clarifying other rules, such as the appropriate comparison rule for adding value and the rules relating to prolonging economic useful life.

In accordance with several comments received in response to Notice 2004–6, the proposed regulations provide that a Federal, state, or local regulator's requirement that a taxpayer perform certain repairs or maintenance is not relevant in determining whether the amount paid improves the unit of property. Several courts have held that amounts paid to bring property into compliance with government regulations were capital expenditures, in part because they made the taxpayer's property more valuable for use in its trade or business. See, *Swig Investment Co.* v. *United States*, 98 F.3d 1359 (Fed. Cir. 1996) (replacing cornices and parapets on hotel to comply with city earthquake ordinance); *Teitelbaum* v. *Commissioner*, 294 F.2d 541 (7th Cir. 1961) (converting electrical system from direct current to alternating current to comply with city ordinance); *RKO Theatres, Inc.* v. *United States*, 163 F. Supp. 598 (Ct. Cl. 1958) (installing fire-proof doors and fire escapes to comply with city code); *Hotel Sulgrave, Inc.* v. *Commissioner*, 21 T.C. 619 (1954) (installing sprinkler system to comply with city code). In each case, however, the court did not rely entirely on regulatory compliance as a basis for requiring capitalization. For example, in *Hotel Sulgrave* and *RKO Theatres,* both involving the installation of certain equipment to comply with city fire codes, the courts emphasized that the work involved the addition of property with a useful life extending beyond the taxable year. Moreover, both *Swig* and *Teitelbaum* involved expenditures for the replacement of major structural components of a building (parapets and cornices in *Swig* and an electrical system in *Teitelbaum*) with upgraded components. Thus, in all these cases, even without the legal compulsion to make these changes, the taxpayers' amounts paid would have constituted capital expenditures.

In contrast to the cases discussed above, both the courts and the IRS have permitted a current deduction for some government mandated expenditures. For example, in *Midland Empire Packing Co.* v. *Commissioner*, 14 T.C. 635 (1950), acq. (1950–2 C.B. 3), the court allowed the taxpayer to deduct the costs of applying a concrete liner to its basement walls to satisfy Federal meat inspectors. Similarly, the IRS has permitted taxpayers to treat as otherwise deductible repairs amounts paid to remediate certain environmental contamination and to replace certain waste storage tanks to comply with applicable state and Federal regulations. See Rev. Rul. 94–38 (1994–1 C.B. 35); Rev. Rul. 98–25 (1998–1 C.B. 998). The IRS specifically recognized in Rev. Rul. 2001–4 (2001–1 C.B. 295) that the requirement of a regulatory authority to make certain repairs or to perform certain maintenance on an asset to continue operating the asset does not mean that the work performed must be capitalized. Thus, the proposed regulations reiterate that statement in Rev. Rul. 2001–4 and provide that a legal compulsion to repair or maintain tangible property is not a relevant factor in the repair versus improvement analysis. The IRS and Treasury Department further believe that a new government requirement for existing property that mandates certain expenditures with respect to the property does not create an inherent defect in the property.

In response to several comments, the proposed regulations provide that if a taxpayer needs to replace part of a unit of property that cannot practicably be replaced with the same type of part, the replacement of the part with an improved but comparable part does not, by itself, result in an improvement to the unit of property. This rule is intended to apply in cases where the same replacement part is no longer available, generally because of technological advancements or product enhancements. This rule, however, is not intended to apply if, instead of replacing an obsolete part with the most similar comparable part available, the taxpayer replaces the part with one of a better quality than what would have sufficed.

The proposed regulations do not prescribe a plan of rehabilitation doctrine as traditionally described in the case law. That judicially-created doctrine provides that a taxpayer must capitalize otherwise deductible repair costs if they are incurred as part of a general plan of rehabilitation to the property. See, *Norwest Corp.* v. *Commissioner*, 108 T.C. 265 (1997); *Moss* v. *Commissioner*, 831 F.2d 833 (9th Cir. 1987); *United States* v. *Wehrli*, 400 F.2d 686 (10th Cir. 1968). Specifically, if an expenditure is made as part of a general plan of rehabilitation, modernization, and improvement of the property, the expenditure must be capitalized, even though, standing alone, the item may be classified as one of repair or maintenance. *Wehrli*, 400 F.2d at 689. Whether a general plan of rehabilitation exists, and whether a particular repair

or maintenance item is part of it, are questions of fact to be determined based upon all the surrounding facts and circumstances, including, but not limited to, the purpose, nature, extent, and value of the work done. *Id.* at 690.

The issue of whether an amount paid must be capitalized under the plan of rehabilitation doctrine has been the subject of much litigation, with varying results. For example, some cases have limited application of the plan of rehabilitation doctrine to buildings that are not suitable for their intended use in the taxpayer's trade or business. See *Schroeder* v. *Commissioner*, T.C. Memo 1996–336; *Koanis* v. *Commissioner*, T.C. Memo 1978–184, aff'd mem., 639 F.2d 788 (9th Cir. 1981); *Keller Street Dev. Co.* v. *Commissioner*, 37 T.C. 559 (1961); acq., 1962–2 C.B. 5, aff'd in part, rev'd in part on other grounds, 323 F.2d 166 (9th Cir. 1963). Other courts, as well as the IRS, have viewed the plan of rehabilitation doctrine more broadly, emphasizing the planned aspect of the work done by the taxpayer, rather than the condition of the property. See *Mountain Fuel Supply Co.* v. *United States*, 449 F.2d 816 (10th Cir. 1971); *Wolfsen Land & Cattle Co.* v. *Commissioner*, 72 T.C. 1 (1979); Rev. Rul. 88–57 (1988–2 C.B. 36).

In Rev. Rul. 2001–4 (2001–1 C.B. 295), the IRS clarified its view of the plan of rehabilitation doctrine. In applying the plan of rehabilitation doctrine to the facts in Situation 3 of that ruling, the IRS noted that (1) the taxpayer planned to perform substantial capital improvements to upgrade the unit of property; (2) the repairs were incidental to the taxpayer's plan to upgrade the unit of property; and (3) the effect of all the work performed on the unit of property, including the repairs and maintenance work, was to materially increase the value or prolong the useful life of the unit of property. The ruling also notes that the existence of a written plan, by itself, is not sufficient to trigger the plan of rehabilitation doctrine. The ruling's interpretation of the plan of rehabilitation doctrine is consistent with the majority of cases applying that doctrine. See *California Casket Co.* v. *Commissioner*, 19 T.C. 32 (1952), acq., 1953–1 C.B. 3; *Stoeltzing* v. *Commissioner*, 266 F.2d 374 (3d Cir. 1959); *Bank of Houston* v. *Commissioner*, T.C.M. 1960–110.

The IRS and Treasury Department do not believe it is appropriate to capitalize as an improvement otherwise deductible repair costs solely because the taxpayer has a plan (written or otherwise) to perform periodic repairs or maintenance or solely because the taxpayer performs several repairs to the same property at one time. The IRS and Treasury Department believe that it is appropriate to capitalize otherwise deductible repair costs as part of an improvement only if the taxpayer improves a unit of property and the otherwise deductible repair costs directly benefit or are incurred by reason of the improvement to the property. Section 263A applies to these expenditures. Section 263A requires that all direct costs of an improvement and all indirect costs that directly benefit or are incurred by reason of the improvement must be capitalized. This application of section 263A to otherwise deductible repair costs in this context is consistent with the application of the plan of rehabilitation doctrine described in Rev. Rul. 2001–4. The proposed regulations provide that repairs that are made at the same time as an improvement, but that do not directly benefit or are not incurred by reason of the improvement, are not required to be capitalized under section 263(a).

VI. Value

A. In General

The proposed regulations provide that a taxpayer must capitalize amounts paid that materially increase the value of a unit of property and provide an exclusive list of five tests for determining whether an amount paid materially increases value. An amount paid must be capitalized if it meets any of the five tests. The first test is whether the amount paid ameliorates a condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property. See *United Dairy Farmers, Inc.* v. *United States*, 267 F.3d 510 (6th Cir. 2001); *Dominion Resources, Inc.* v. *United States*, 219 F.3d 359 (4th Cir. 2000); *Jones* v. *Commissioner*, 242 F.2d 616 (5th Cir. 1957). This rule is consistent with the concept that amounts paid to put property into ordinarily efficient operating condition must be capitalized. This pre-existing defect rule applies regardless of whether the taxpayer was aware of the condition or defect at the time of acquisition or production. The IRS and Treasury Department considered but rejected as too subjective the idea of providing different treatment based on the taxpayer's prior knowledge of the condition or defect. The IRS and Treasury Department request comments on whether, and in what circumstances, the pre-existing defect rule should take into account the condition of the property in the hands of a transferor. For example, if an individual transfers property to a corporation in exchange for stock in a transaction under section 351, should the pre-existing defect rule take into account the condition of the property when acquired by the individual, rather than the condition of the property when received by the corporation?

The second test for materially increasing value is whether the work was performed prior to the date the property is placed in service by the taxpayer. This test essentially restates the concept that amounts paid to put property into ordinarily efficient operating condition must be capitalized. The IRS and Treasury Department believe that if the property cannot be placed in service prior to work being performed, that work necessarily increases the value of the property.

The third value test is whether the amounts paid adapt the property to a new or different use. The commentators agreed that this factor should remain a standard for capitalization. The new or different use standard is unchanged from the current regulations, but it is included in the value section of the proposed regulations, rather than as its own standard. The new or different use test is not intended to apply to amounts paid to prepare a unit of property for sale (for example, painting a house).

The fourth value test is whether the amount paid results in a betterment or material addition to the unit of property. The betterment language is consistent with the statutory language of section 263(a)(1) as well as the current regulations at § 1.263(a)-1(a)(1). A betterment is an improvement that does more than restore to a former good condition. The betterment test is intended to capture amounts paid that are qualitative improvements to the property that make the property better and more valuable than mere repairs would do, such as using upgraded materials when materials comparable to the original were available and would have sufficed. However, the betterment test is not intended to be a fair market value test.

The fifth test in the value section of the proposed regulations is whether the amount paid results in a material increase in capacity, productivity, efficiency, or quality of output of the unit of property. These standards are consistent with case law under the current regulations.

The proposed regulations provide an exception to the value tests if the original economic useful life of the unit of property is 12 months or less and the taxpayer does not elect to capitalize amounts paid for the property. The purpose of this rule is to not require capitalization under the value rules for

improvements made to 12-month property. This exception, however, does not apply to the restoration rule for determining whether an amount paid improves property. Thus, for example, if a taxpayer performs work on 12-month property that prolongs the economic useful life of the property, the amount paid must be capitalized.

The proposed regulations do not adopt an increase in fair market value as a standard for capitalization. In response to Notice 2004–6, most commentators stated that value means fair market value. However, in practice, taxpayers generally do not measure, and would have no reason to measure, the fair market value of a unit of property prior to some condition necessitating the expenditure. Further, taxpayers generally have no reason to measure the fair market value of a unit of property after the work is performed. The IRS and Treasury Department did not want to propose regulations with a standard that required taxpayers to have property appraised solely for the purpose of applying a capitalization standard. In fact, the courts rarely have applied a strict increase in fair market value standard. Usually, the courts rely on some surrogate for fair market value to determine whether value is increased. For example, courts have looked to the amount of the expenditure versus (1) the cost of the property (see *Stoeltzing* v. *Commissioner*, 266 F.2d 374 (3d Cir. 1959)); (2) the cost of comparable new property (see *LaSalle Trucking Co.* v. *Commissioner*, T.C. Memo 1963–274); and (3) the cost of comparable used property (see *Ingram Industries, Inc.* v. *Commissioner*, T.C. Memo 2000–323). Courts have considered fair market value only in a few cases when property has been appraised for some other purpose (see *Jones* v. *United States*, 279 F. Supp. 772, 774 (D. Del. 1968)), or when property has been appraised in the course of the litigation (see *FedEx*, 291 F. Supp. 2d at 706–707).

Additionally, the fair market value of property may change over time without regard to the use, upkeep, or improvements made by the taxpayer, due to other factors such as supply and demand or changes in style, trends, technologies, etc. For example, land may increase in fair market value over time without the taxpayer performing any activities to improve it. Conversely, amounts paid to make substantial improvements to a unit of property may not always increase fair market value, or may not increase the fair market value by the full amount paid for the improvements. See, *Harrah's Club* v. *United States*, 661 F.2d 203 (Ct. Cl. 1981) (amount paid to restore antique automobiles must be capitalized even though restoration did not increase fair market value by the amount paid for the restoration). Attempting to adjust fair market value for factors like these further complicates any possible comparison. The IRS and Treasury Department believe that the fair market value standard is too subjective and impractical, particularly because most repairs also increase the fair market value of property if the value is compared immediately before and after the work is performed. Therefore, the IRS and Treasury Department do not believe that fair market value is an appropriate standard. The value factors in the proposed regulations are intended to be objective indications of work performed that generally would increase the fair market value of the unit of property. Whether amounts paid materially increase the value of a unit of property requires an analysis of the purpose, the physical nature, and the effect of the work for which the amounts were paid, and not an analysis of the fair market value of the property or the level of monetary expenditures.

Some commentators requested that the regulations provide a bright line rule defining a material increase in value with respect to a specified percentage increase, for example a twenty-five percent increase in capacity. The IRS and Treasury Department do not believe that providing a fixed percentage as a presumption of what is a material increase would be an appropriate safe harbor. Although perhaps measurable, the same fixed percentage increase in capacity would not work well as a rule applicable to all types of property. A twenty-five percent increase in capacity may be a reasonable litmus test for determining whether there has been a material increase in value for certain types of property. However, for many types of property, a much smaller increase in capacity may be an extraordinary, or in some cases impossible, improvement. For example, an increase in the square footage of a 50,000 square foot building by 5 percent would be a rather large improvement that should be capitalized. Therefore, the determination of whether an increase in capacity, productivity, efficiency, or quality is a material increase in value should be based on all the facts and circumstances.

B. Appropriate Comparison

Notice 2004–6 requested comments on the proper starting point for comparing whether an expenditure materially increases the value of property. Almost all the commentators suggested that the proposed regulations adopt the test set forth in *Plainfield-Union Water Co.* v. *Commissioner*, 39 T.C. 333 (1962), nonacq. on other grounds (1964–2 C.B. 8) (the Plainfield-Union test). In that case, the court noted that almost any properly performed repair adds value as compared with the situation existing immediately prior to that repair. The proper test, the court said, is whether the expenditure materially enhances the value of the property as compared with the status of the property prior to the condition necessitating the expenditure. The court also noted that the test is appropriate even when the expenditure does not arise from a sudden, unexpected, or unusual external circumstance.

The IRS and Treasury Department agree with this application of the Plainfield-Union test and believe that the test is appropriately applied to cases of normal wear and tear as well as cases when the expenditure arises from a sudden, unexpected, or unusual external circumstance. The proposed regulations adopt the Plainfield-Union test for cases in which a particular event necessitates the expenditure and clarify that when the event necessitating the expenditure is normal wear and tear, the condition of the property immediately prior to the event necessitating the expenditure is the condition of the property after the last time the taxpayer corrected the effects of normal wear and tear or, if the taxpayer has not previously corrected the effects of normal wear and tear, the condition of the property when placed in service by the taxpayer. This comparison rule for wear and tear is intended to apply when a taxpayer engages in regular, cyclical maintenance of a unit of property to correct the effects of normal wear and tear. Although wear and tear begins affecting the condition of property as soon as it is placed in service, the proposed regulations do not adopt the placed-in-service date as the appropriate comparison point. Although the placed-in-service date would be the appropriate comparison point when the taxpayer first corrects the effects of normal wear and tear, the IRS and Treasury Department believe that the condition of the property after the previous maintenance cycle is the appropriate comparison point for each subsequent maintenance cycle.

The Plainfield-Union test works well when the amount paid is necessitated by a specific event (like amounts paid to repair damage or amounts paid to maintain property by correcting the effects of wear and tear). However, the test does not work in a pure improvement setting; that is, when a taxpayer decides to improve property

without any event causing the taxpayer to perform the work to restore the property to a former good condition. Therefore, the proposed regulations do not apply the Plainfield-Union test to the first three value factors (pre-existing defects, work performed prior to the property being placed in service, and adapting the property to a new or different use). These factors are more appropriately analyzed on an absolute, rather than relative basis. Similarly, the test does not work well for betterments, which by definition are improvements that do more than restore property to a former good condition.

VII. Restoration

The proposed regulations provide that a taxpayer must capitalize amounts paid to restore property. The restoration language is from section 263(a)(2) and § 1.263(a)–1(a)(2) of the current regulations and generally has been viewed as a rule requiring the capitalization of amounts paid that substantially prolong the useful life of the property. See § 1.263(a)–1(b). This section of the proposed regulations defines economic useful life and what it means to substantially prolong economic useful life.

The comments received in response to Notice 2004–6 varied greatly with regard to useful life, with two commentators specifically suggesting that the concept of useful life be eliminated from the regulations. The other commentators suggested that economic useful life be defined as the period of time over which the property is expected to be useful to the taxpayer, taking into account the various factors listed in § 1.167(a)–1(b). The proposed regulations adopt this definition of economic useful life for taxpayers that do not have an AFS. Economic useful life is not determined by reference to the recovery period under section 168 for the property.

For a taxpayer that has an AFS, the economic useful life of the property is presumed to be the same as the useful life used by the taxpayer for purposes of determining depreciation in its AFS. The IRS and Treasury Department believe that the economic useful life definition is subjective and difficult to apply; therefore, this rule provides certainty for taxpayers with an AFS. The regulations provide an exception to this rule for situations in which a taxpayer does not assign a useful life to certain property in its AFS, even though the property has a useful life of more than one year. For example, a taxpayer may treat amounts paid for a unit of property as an expense in its AFS if the property is used in a specific research project and has no alternative future uses. Additionally, many taxpayers have a policy of treating as an expense in their AFS an amount paid for tangible property below a certain dollar threshold, despite the fact that the property has a useful life of more than one year. This type of property does not have a useful life for purposes of determining depreciation in the taxpayer's AFS, even though it may have a useful life of more than one year. Therefore, the IRS and Treasury Department believe that in these situations it is appropriate for taxpayers to use the economic useful life definition that applies to taxpayers without an AFS.

One commentator stated that the useful life used for book depreciation purposes is not appropriate for tax purposes because the book useful life takes into account factors that do not measure the inherent useful life, but rather the period over which the property is expected to be useful (on average) to the taxpayer. The IRS and Treasury Department believe it is appropriate to take into account the period over which the property may reasonably be expected to be useful to the taxpayer, as required by taxpayers without an AFS, rather than the inherent useful life of the property.

The proposed regulations also provide four rules for determining when an amount paid substantially prolongs economic useful life. The first rule requires capitalization when the amount paid extends the period over which the property may reasonably be expected to be useful to the taxpayer beyond the end of the taxable year immediately succeeding the taxable year in which the economic useful life of the property was originally expected to cease. One commentator suggested that the regulations provide a safe harbor bright line rule to define whether an amount substantially prolongs the useful life. The IRS and Treasury Department believe that a one year rule is an appropriate bright line. Therefore, the regulations require capitalization when the amount paid extends the original useful life of the property by more than one taxable year. The IRS and Treasury Department believe that a one year rule is a more appropriate bright line than a rule based on a percentage of the useful life, because the one-year rule corresponds with the 12-month safe harbor rule for the acquisition or production of property.

The second rule requires capitalization if a major component or a substantial structural part of the unit of property is replaced and notes that the replacement of a relatively minor portion of the physical structure of the unit of property or a relatively minor portion of any of its major parts does not constitute the replacement of a major component or substantial structural part of the unit of property. It is possible, however, for amounts paid to replace a relatively minor portion of the physical structure of the unit of property or a relatively minor portion of any of its major parts to substantially prolong the economic useful life of the property if the property is near the end of its economic useful life, in which case the amounts paid nevertheless must be capitalized. The rule is not intended to require capitalization if a major component is replaced with a similar, used component that has not been rebuilt, for example, if the engine in a car is replaced with a used engine with similar mileage obtained from a junkyard, or a component of property subject to a warranty or maintenance agreement is replaced with a used part that has been repaired.

Although the replacement of minor parts does not usually prolong the economic useful life of most property, the replacement of most or all minor parts for some types of property may be the equivalent of rebuilding the property, particularly in cases in which the property consists almost entirely of minor parts. Therefore, the third rule provides that amounts paid that restore a unit of property (or a major component or substantial structural part of the unit of property) to a like-new condition substantially prolong the useful life. The IRS and Treasury Department intend that this test be applied to situations in which the property undergoes the equivalent of being rebuilt. Merely reconditioning a property by dismantling the property, and cleaning and inspecting components, is not the equivalent of rebuilding. All or almost all major and minor parts of the unit of property (or the major component or substantial structural part of the unit of property) must be returned to the original manufacturers' specifications.

The fourth rule relates to the restoration of a unit of property after the taxpayer has properly deducted a casualty loss under section 165 with respect to the property. Section 165(a) allows a taxpayer to deduct any loss sustained during the taxable year and not compensated for by insurance or otherwise. Generally, any loss arising from a fire, storm, shipwreck, or other casualty is allowable as a deduction under section 165(a). Section 1.165–7(a)(1). The amount of the deduction is the difference between the fair market value of the property before and after

the casualty, to the extent the amount does not exceed the property's adjusted basis. Section 1.165–7(b)(1). A casualty loss deduction under section 165(a) results in a decrease in the taxpayer's basis in the property.

The courts have distinguished between losses that are deductible as casualties under section 165(a) and incidental repair costs that are deductible under section 162(a) as ordinary and necessary business expenses. In general, if property is lost, destroyed, or abandoned as a result of a casualty, a loss deduction under section 165(a) is appropriate; however, if property is simply damaged in a casualty and expenditures are made to repair the property in a manner that does not permanently improve or better it or prolong its useful life, those expenditures are business expenses deductible under section 162(a). *Hensler* v. *Commissioner*, 73 T.C. 168, 179 (1979); *see* also *Hubinger* v. *Commissioner*, 36 F.2d 724, 726 (2d Cir. 1929) (expenses resulting from ''trifling accidental causes'' are deductible only under section 162(a) and not under section 165(a)); *Atlantic Greyhound Corp.* v. *United States*, 111 F. Supp. 953 (1953) (''the provisions for deductions of 'ordinary and necessary expenses' and 'casualty losses' would seem to be mutually exclusive, for the normal connotation of one negates, at least by implication, the idea of the other''). Thus, the mere fact that the damage results from a casualty is not controlling; instead, the nature of the damage resulting from the casualty is relevant in determining whether the expenditure should be treated as a loss or deduction.

The IRS and Treasury Department believe that when a taxpayer properly deducts a casualty loss, the nature of the damage resulting from the casualty is such that any repairs done to restore the property after the casualty should not be treated as ordinary and necessary repair costs. Thus, the proposed regulations provide that any amounts paid to repair property after a casualty loss must be capitalized.

Commentators stated that amounts paid at any point during the property's economic useful life that do not change the function, design, *etc.,* but enable property to be used for its expected useful life should not be determined to extend the useful life. The IRS and Treasury Department believe that there are circumstances in which amounts paid that merely restore property to a former good condition may properly be capitalized as substantially prolonging useful life, for example, when repairs are made to property after a casualty loss. As another example, work performed at the end of the economic useful life of the unit of property may extend the property's useful life. Additionally, replacement of a major component or a substantial structural part of a unit of property extends the useful life, particularly when the expected life of the component is coterminous with the economic useful life of the unit of property, and the economic useful life of the unit of property is in fact limited by the period over which the component is expected to be useful. Thus, the proposed regulations do not adopt the commentators' suggestion.

VIII. Repair Allowance Method

A. In General

The primary focus of the proposed regulations is to provide guidance that distinguishes deductible repair expenses from capital expenditures. However, because this remains inherently a facts-and-circumstances based determination, the IRS and Treasury Department requested comments in Notice 2004–6 on whether the regulations should provide a repair allowance. Six commentators suggested the regulations should provide a repair allowance or other *de minimis* rules for repair expenditures. Two commentators specifically proposed a repair allowance system modeled on the former CLADR repair allowance system. The proposed regulations adopt these suggestions and provide an optional repair allowance method, similar to the CLADR repair allowance, to create objective rules in this area. Although some commentators additionally requested other *de minimis* rules for repair expenditures as well, the IRS and Treasury Department believe that a repair allowance is an appropriate safe harbor for repair expenditures. Therefore, the proposed regulations do not provide a safe harbor other than the repair allowance.

Under the repair allowance in the proposed regulations, the taxpayer compares the amounts paid for materials and labor during the taxable year to repair, maintain, or improve repair allowance property to the repair allowance amount. The amounts paid are deductible under section 162 to the extent of the repair allowance amount, and any excess amounts paid are capitalized. Under the proposed repair allowance method, a repair allowance amount is determined separately for each MACRS class. The repair allowance amount for a particular class is determined by multiplying the repair allowance percentage in effect for that class by the average unadjusted basis of repair allowance property in that class. For buildings that are repair allowance property, the repair allowance method is applied separately to each building. This rule is consistent with the rule for buildings under the CLADR repair allowance system.

B. Capitalized Amount

The excess of amounts paid to repair, maintain, or improve all the repair allowance property in a MACRS class over the repair allowance amount for the class must be capitalized (the capitalized amount). The capitalized amount includes the taxpayer's direct costs of repairing, maintaining, or improving repair allowance property in a particular MACRS class. In addition, the taxpayer must add to the capitalized amount any allocable indirect costs of producing the repair allowance property in the MACRS class, which must be capitalized in accordance with the taxpayer's method of accounting for section 263A costs. Except with regard to repair allowance property that is depreciated under section 168(g) or repair allowance property that is public utility property (for which separate rules are provided), the proposed regulations permit taxpayers to choose one of two methods of treating the capitalized amount. The first method is to treat the capitalized amount as a separate single asset and to depreciate the asset in accordance with that MACRS class. The second method is to allocate the capitalized amount for a particular MACRS class to all repair allowance property in the particular MACRS class in proportion to the unadjusted basis of the property in that MACRS class as of the beginning of the taxable year. Under either the single asset method or the allocation method, the capitalized amount is treated as a section 168(i)(6) improvement and is treated as placed in service by the taxpayer on the last day of the first half of the taxable year in which the amount is paid, before application of the convention under section 168(d). For example, the capitalized amount for a calendar year taxpayer would be treated as placed in service on June 30 of the taxable year.

Because the single asset treatment does not permit taxpayers to recognize a gain or loss on the disposition of repair allowance property, the IRS and Treasury Department request comments on whether, in the final regulations, taxpayers should be permitted to change to the allocation treatment for the taxable year of disposition and if so, what record keeping rules or other rules should be required for taxpayers to make that change. With regard to the

allocation treatment, the IRS and Treasury Department request comments on whether the allocation should be based on an amount other than the unadjusted basis as of the beginning of the taxable year, such as the unadjusted basis at the end of the taxable year or the average unadjusted basis.

C. Repair Allowance Property

Repair allowance property is defined in the proposed regulations as real or personal property subject to MACRS that is used in the taxpayer's trade or business or for the production of income. It also includes certain tangible property not otherwise subject to MACRS if the taxpayer, solely for purposes of the repair allowance method, classifies the property in the appropriate MACRS class in which the property would be included if the property were subject to MACRS. Taxpayers are not required to classify non-MACRS property (property placed in service before the effective date of section 168 and property for which the taxpayer properly elected out of section 168). Non-classified property will not be repair allowance property eligible for the repair allowance method. Certain types of property are not included in repair allowance property, including any property for which the taxpayer has elected to use the CLADR repair allowance method and property for which the taxpayer uses the method of accounting provided in Rev. Proc. 2001–46 (2001–2 C.B. 263) or Rev. Proc. 2002–65 (2002–2 C.B. 700) (both with regard to railroad track). Thus, the repair allowance in the proposed regulations does not repeal the CLADR repair allowance, nor does it prohibit taxpayers from using the repair allowance method in these regulations for repair allowance property, while continuing to use the CLADR repair allowance for other property.

D. Excluded Additions

Repair allowance property also does not include excluded additions, the cost of which must be capitalized. The CLADR repair allowance system has a similar rule. Under the CLADR repair allowance system, excluded additions are defined as any expenditures (1) that increase by 25% or more the productivity or capacity of an existing identifiable unit of property over its productivity or capacity when first acquired; (2) that modify an existing identifiable unit of property for a substantially different use; (3) for an additional identifiable unit of property or a replacement of an identifiable unit of property that was retired; (4) for a replacement of a part in or a component or portion of an existing identifiable unit of property if such part, component, or portion is for replacement of a part, component or portion which was retired in a retirement upon which gain or loss was recognized; (5) in the case of a building or other structure, for additional cubic or linear space; and (6) in the case of those units of property of pipelines, electric utilities, telephone companies, and telegraph companies consisting of lines, cables, and poles, for replacement of 5% or more of the unit of property with respect to which the replacement is made.

One commentator suggested that the proposed regulations should not have excluded additions similar to those in the CLADR repair allowance because they are too qualitative and difficult to administer. The IRS and Treasury Department agree that some of the items listed as excluded additions under the CLADR system are too subjective and do not provide the kind of objective determination the proposed repair allowance is intended to provide. For this reason, the proposed regulations limit the excluded additions to amounts paid (1) For the acquisition or production of a specific unit of property; (2) for work that ameliorates a condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property, whether or not the taxpayer was aware of the condition or defect at the time of acquisition or production; (3) for work performed prior to the date the unit of property is placed in service by the taxpayer (without regard to any applicable convention under section 168(d)); (4) that adapts the unit of property to a new or different use; or (5) that increases the cubic or square space of a building.

Thus, the proposed regulations adopt excluded additions 2, 3, and 5 in the CLADR repair allowance. These excluded additions are also listed in § 1.263(a)–3(e)(1) of the proposed regulations as factors that indicate a material increase in value. The regulations do not adopt excluded addition 1 in the CLADR repair allowance because an increase in productivity or capacity of 25% or more may be too difficult to measure. The regulations do not specifically cite excluded addition 4 from the CLADR repair allowance; however, if a part, component, or portion of a unit of property is retired in a retirement upon which gain or loss properly was recognized, the replacement of that component is a separate unit of property under § 1.263(a)–3(d)(2) of the proposed regulations and thus is addressed by excluded addition 1 of the proposed regulations. Excluded addition 6 in the CLADR repair allowance addresses network assets and was not adopted in the proposed regulations pending comments on how the final regulations should address the unit of property rules relating to network assets.

In addition to the three excluded additions that the proposed regulations carry over from the CLADR repair allowance, the excluded additions in the proposed regulations include amounts paid for work that ameliorates a pre-existing condition or defect and for work performed prior to the date the unit of property is placed in service by the taxpayer. These two excluded additions also are listed as factors in § 1.263(a)–3(e)(1) of the proposed regulations that indicate a material increase value. The IRS and Treasury Department believe that the excluded additions provided in the repair allowance in the proposed regulations are more objective than those in the CLADR regulations and are easier to verify.

E. Leased Property

Like the repair allowance under CLADR, repair allowance property does not include property leased by the taxpayer from another party. One commentator suggested that the repair allowance apply to leased property. The IRS and Treasury Department recognize that taxpayers that lease property confront the same issues as owners in distinguishing deductible repairs from capital improvements. However, the application of the repair allowance method to leased property raises several difficult issues. The IRS and Treasury Department request comments on whether the repair allowance method should be extended to leased property and, if so, how the following issues should be resolved: (1) How should the unadjusted basis of leased property be determined? Should fair market value be used instead of unadjusted basis and, if so, how and when should fair market value be determined? (2) How should the regulations be drafted to prevent abuse between related lessors and lessees? (3) How should the regulations be drafted to prevent both the lessor and lessee from using the repair allowance method for the same property? (4) How should the regulations address qualified lessee construction allowances for short-term leases under section 110? (5) What is the proper treatment of the capitalized amount for leased property under the repair allowance? (6) Should lessees be permitted to classify the leased property to a MACRS class and

use one of the treatments of the capitalized amount in the proposed regulations? (7) Should the capitalized amount be allocated to individual leases and amortized over the remaining term of each lease and, if so, how should that allocation be made? (8) If the taxpayer has a number of leases with varying lease terms, should the capitalized amount be allocated to certain groups of leases and amortized over the average remaining term of the leases and if so, how should the leases be grouped? (9) Are there any other issues with regard to the application of a repair allowance to leased property that need to be addressed?

F. Network Assets

The definition of repair allowance property in the proposed regulations does not specifically exclude network assets. However, application of the repair allowance requires a determination of the appropriate unit of property, in particular with regard to identifying excluded additions. The unit of property determination with regard to network assets is not addressed in the proposed regulations and is an issue on which the IRS and Treasury Department have requested comments. Therefore, the IRS and Treasury Department anticipate that final regulations specifically will include network assets as repair allowance property if appropriate unit of property rules can be determined. If appropriate unit of property rules cannot be determined for network assets, the IRS and Treasury Department request comments on whether to develop industry-specific guidance on how the repair allowance method should apply (in particular, how excluded additions should be determined) with regard to network assets in a particular industry.

G. Repair Allowance Percentages

The repair allowance percentages under the CLADR repair allowance were determined by the Treasury Department's Office of Industrial Economics, which is no longer in existence. The percentages were published in various revenue procedures (most recently in Rev. Proc. 83–35 (1983–1 C.B. 745)), made obsolete by Rev. Proc. 87–56 (1987–2 C.B. 674) with regard to property subject to section 168, and were revised and supplemented periodically. The proposed regulations create a new repair allowance percentage for each MACRS class. These rates are based on the principle that a taxpayer will spend 50% of the property's unadjusted basis on repairs over the property's MACRS recovery period. Thus, the repair allowance percentages for a particular MACRS class in the proposed regulations were computed by: (1) Dividing 100% by the number of years in the recovery period for the MACRS class, which represents the portion of the property's unadjusted basis that is allocable to each year of the recovery period, and; (2) multiplying the result by 50%. For example, if a taxpayer has repair allowance property in a MACRS class with a 5 year recovery period, 100% divided by 5 is 20%, which represents the portion of the property's unadjusted basis that is allocable to each year of the recovery period. Multiplying the 20% amount by 50% results in a repair allowance percentage of 10% for that MACRS class.

The IRS and Treasury Department request comments on whether the repair allowance percentages should be different than those provided in the proposed regulations, whether the rates in Rev. Proc. 83–35 should be used, and whether the final regulations should permit taxpayers to choose between repair allowance percentages in Rev. Proc. 83–35 and the final regulations. The IRS and Treasury Department also request comments on whether a separate repair allowance percentage should be provided for certain types of property, such as repair allowance property subject to section 168(g) (for example, a percentage that reflects the recovery period under the alternative depreciation system in section 168(g) rather than the MACRS recovery period under section 168). Finally, the IRS and Treasury Department request comments on whether industries should be permitted to request guidance through the Industry Issue Resolution program to establish different repair allowance percentages for their particular industry.

H. Manner of Electing and Manner of Revoking Election

The proposed regulations reserve the issue of how a taxpayer will elect the repair allowance method. Two commentators suggested that taxpayers be permitted to elect the repair allowance on a year by year basis. The IRS and Treasury Department disagree with this suggestion. The repair allowance method is a method of accounting under section 446(e) and should be used consistently by taxpayers. Allowing a year by year election would complicate a taxpayer's recordkeeping and would create a burden on IRS examining agents when auditing a taxpayer's compliance with the repair allowance method. Therefore, the IRS and Treasury Department do not expect to permit a year by year election. However, even though the repair allowance method is a method of accounting under section 446(e), the IRS and Treasury Department expect to provide that taxpayers may elect the repair allowance method prospectively without having to file an application for change in accounting method and that the election be done on a cutoff basis. Procedures for electing the repair allowance method will be provided either in the final regulations or in published guidance in the Internal Revenue Bulletin.

The proposed regulations provide that the repair allowance method, if elected, must be elected for all repair allowance property. A taxpayer may revoke an election made under the repair allowance method only by obtaining the Commissioner's consent. Procedures for obtaining the Commissioner's consent to revoke an election will be provided either in the final regulations or in published guidance in the Internal Revenue Bulletin. The IRS and Treasury Department expect to provide that a taxpayer that revokes an election may not re-elect the repair allowance method for a period of at least five taxable years, beginning with the year of the revocation unless, based on a showing of unusual and compelling circumstances, consent is specifically granted by the Commissioner to re-elect the repair allowance at an earlier time. The IRS and Treasury Department request comments on the appropriateness of the five year waiting period, as well as on the circumstances that should be considered unusual and compelling so that the Commissioner would grant consent to re-elect the repair allowance prior to expiration of the five year waiting period.

I. Recordkeeping

The proposed regulations do not impose any specific recordkeeping requirements. However, under section 6001, taxpayers are required to keep books and records sufficient to establish the amounts used to compute a deduction under the repair allowance method. For example, taxpayers must maintain books and records reasonably sufficient to determine (1) The total amounts paid (other than amounts paid for excluded additions) during the taxpayer year for the repair, maintenance, or improvement of repair allowance property in the specific MACRS class; (2) the unadjusted basis of all repair allowance property in the specific MACRS class at the beginning and the end of the taxable year; (3) the repair allowance percentages used for the specific MACRS class for the taxable year; and (4) the treatment of the capitalized amounts (whether

capitalized as a single asset or allocated to all repair allowance property in the specific MACRS class).

Proposed Effective Date

These regulations are proposed to apply to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. The final regulations will provide rules applicable to taxpayers that seek to change a method of accounting to comply with the rules contained in the final regulations. Taxpayers may not change a method of accounting in reliance upon the rules contained in the proposed regulations until the rules are published as final regulations in the **Federal Register**.

The IRS and Treasury Department anticipate that, except as otherwise provided (for example, in the repair allowance section), the final regulations will provide that a taxpayer seeking to change to a method of accounting provided in the final regulations must follow the applicable procedures for obtaining the Commissioner's automatic consent to a change in accounting method. Generally, a change in method of accounting is made using an adjustment under section 481(a). However, the IRS and Treasury Department are concerned about the potential administrative burden on taxpayers and the IRS that may result from section 481(a) adjustments that originate many years prior to the effective date of the final regulations. The IRS and Treasury Department request comments on whether there are circumstances in which it is appropriate to permit a change in method of accounting to be made using a cut-off basis instead of a section 481(a) adjustment. Finally, the IRS and Treasury Department request comments on any additional terms and conditions for changes in methods of accounting that would be helpful to taxpayers in adopting the rules contained in these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, December 19, 2006, at 10 a.m., in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Due to building security procedures, visitors must enter at the main front entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 28, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kimberly L. Koch, Office of the Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–4 is revised to read as follows:

§ 1.162–4 Repairs.

Amounts paid for repairs and maintenance to tangible property are deductible if the amounts paid are not required to be capitalized under § 1.263(a)–3.

Par. 3. Section 1.263(a)–0 is amended by revising the entries for § 1.263(a)–1 through § 1.263(a)–3 to read as follows:

§ 1.263(a)–0 Table of contents. * * *

§ 1.263(a)–1 Capital expenditures; in general.

(a) General rule for capital expenditures.
(b) Examples of capital expenditures.
(c) Amounts paid to sell property.
(1) In general.
(2) Treatment of capitalized amount.
(3) Examples.
(d) Amount paid.
(e) Effective date.
(f) Accounting method changes.

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

(a) Overview.
(b) Definitions.
(1) Amount paid.
(2) Personal property.
(3) Real property.
(4) Produce.
(c) Coordination with other provisions of the Internal Revenue Code.
(1) In general.
(2) Materials and supplies.
(d) Acquired or produced tangible property.
(1) In general.
(i) Requirement of capitalization.
(ii) Examples.
(2) Defense or perfection of title to tangible property.
(i) In general.
(ii) Examples.
(3) Transaction costs.
(i) In general.
(ii) Examples.
(4) 12-month rule.
(i) In general.
(ii) Coordination with section 461.
(iii) Exceptions to 12-month rule.
(iv) Character of property subject to 12-month rule.
(v) Election to capitalize.
(vi) Examples.
(e) Treatment of capital expenditures.
(f) Recovery of capitalized amounts.

(1) In general.
(2) Examples.
(g) Effective date.
(h) Accounting method changes.

§ 1.263(a)–3 Amounts paid to improve tangible property.

(a) Overview.
(b) Definitions.
(1) Amount paid.
(2) Personal property.
(3) Real property.
(c) Coordination with other provisions of the Internal Revenue Code.
(1) In general.
(2) Example.
(d) Improved property.
(1) Capitalization rule.
(2) Determining the appropriate unit of property.
(i) In general.
(ii) Initial unit of property determination.
(iii) Category I: Taxpayers in regulated industries.
(iv) Category II: Buildings and structural components.
(v) Category III: Other personal property.
(vi) Category IV: Other real property.
(vii) Additional rule.
(viii) Examples.
(3) Compliance with regulatory requirements.
(4) Unavailability of replacement parts.
(5) Repairs performed during an improvement.
(i) In general.
(ii) Exception for individuals.
(e) Value.
(1) In general.
(2) Exception.
(3) Appropriate comparison.
(4) Examples.
(f) Restoration.
(1) In general.
(2) Economic useful life.
(i) Taxpayers with an applicable financial statement.
(ii) Taxpayers without an applicable financial statement.
(iii) Definition of ''applicable financial statement.''
(3) Substantially prolonging economic useful life.
(i) In general.
(ii) Replacements.
(iii) Restoration to like-new condition.
(iv) Restoration after a casualty loss.
(4) Examples.
(g) Repair allowance method.
(1) In general.
(2) Election of repair allowance method.
(3) Application of repair allowance method.
(4) Repair allowance amount.
(i) In general.
(ii) Average unadjusted basis.
(iii) Unadjusted basis.
(iv) Buildings.
(5) Capitalized amount.
(i) In general.
(ii) Single asset treatment of capitalized amount.
(iii) Allocation treatment of capitalized amount.
(iv) Section 168(g) repair allowance property.
(v) Section 168(g) election.
(vi) Public utility property.
(6) Repair allowance property.
(i) In general.
(ii) Certain property not subject to section 168.
(iii) Exclusions from repair allowance property.
(7) Excluded additions.
(i) In general.
(ii) Treatment of excluded additions.
(8) Repair allowance percentage.
(9) Manner of election.
(10) Manner of revoking election.
(11) Examples.
(h) Treatment of capital expenditures.
(i) Recovery of capitalized amounts.
(j) Effective date.
(k) Accounting method changes.

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Par. 4. Sections 1.263(a)–1 through 1.263(a)–3 are revised to read as follows:

§ 1.263(a)–1 Capital expenditures; in general.

(a) *General rule for capital expenditures.* Except as provided in chapter 1 of the Internal Revenue Code, no deduction is allowed for—

(1) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, or

(2) Any amount paid in restoring property or in making good the exhaustion thereof for which an allowance is or has been made in the form of a deduction for depreciation, amortization, or depletion.

(b) *Examples of capital expenditures.* The following amounts paid are examples of capital expenditures:

(1) An amount paid to acquire or produce real or personal property. See § 1.263(a)–2.

(2) An amount paid to improve real or personal property. See § 1.263(a)–3.

(3) An amount paid to acquire or create intangibles. See § 1.263(a)–4.

(4) An amount paid or incurred to facilitate an acquisition of a trade or business, a change in capital structure of a business entity, and certain other transactions. See § 1.263(a)–5.

(5) An amount assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. See section 118 and § 1.118–1.

(6) An amount paid by a holding company to carry out a guaranty of dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary. This amount must be added to the cost of the stock in the subsidiary.

(c) *Amounts paid to sell property*—(1) *In general.* Commissions and other transaction costs paid to facilitate the sale of property generally must be capitalized. However, in the case of dealers in property, amounts paid to facilitate the sale of property are treated as ordinary and necessary business expenses. See § 1.263(a)–5(g) for the treatment of amounts paid to facilitate the disposition of assets that constitute a trade or business.

(2) *Treatment of capitalized amount.* Amounts capitalized under paragraph (c)(1) of this section are treated as a reduction in the amount realized and generally are taken into account either in the taxable year in which the sale occurs or in the taxable year in which the sale is abandoned if a loss deduction is permissible. The capitalized amount is not added to the basis of the property and is not treated as an intangible under § 1.263(a)–4.

(3) *Examples.* The following examples, which assume the sale is not an installment sale under section 453, illustrate the rules of this paragraph (c):

Example 1. Sales costs of real property. X owns a parcel of real estate. X sells the real estate and pays legal fees, recording fees, and sales commissions to facilitate the sale. X must capitalize the fees and commissions and, in the taxable year of the sale, offset the fees and commissions against the amount realized from the sale of the real estate.

Example 2. Sales costs of dealers. Assume the same facts as in *Example 1*, except that X is a dealer in real estate. The commissions and fees paid to facilitate the sale of the real estate are treated as ordinary and necessary business expenses under section 162.

Example 3. Sales costs of personal property used in the trade or business. X is a farmer and owns a truck for use in X's trade or business. X decides to sell the truck and on November 15, 2008, X pays to advertise the sale of the truck in the local news media. On February 15, 2009, X sells the truck to Y. X is required to capitalize in 2008 the amount paid to advertise the sale of the truck and, in 2009, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 4. Costs of abandoned sale of personal property used in a trade or business. Assume the same facts as in *Example 3*, except that, instead of selling the truck on February 15, 2009, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in 2008 the amount paid to advertise the sale of the truck. However, X may treat the amount paid as a loss under section 165 in 2009 when the sale is abandoned.

Example 5. Sales costs of personal property not used in a trade or business. Assume the same facts as in *Example 3*, except that X does not use the truck in X's trade or business, but instead uses it for personal

purposes. X decides to sell the truck and on November 15, 2008, X pays to advertise the sale of the truck in the local news media. On February 15, 2009, X sells the truck to Y. X is required to capitalize in 2008 the amount paid to advertise the sale of the truck and, in 2009, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 6. Costs of abandoned sale of personal property not used in a trade or business. Assume the same facts as in *Example 5*, except that, instead of selling the truck on February 15, 2009, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in 2008 the amount paid to advertise the sale of the truck. Although the sale is abandoned in 2009, X may not treat the amount paid as a loss under section 165 because the truck was not used in X's trade or business or in a transaction entered into for profit.

(d) *Amount paid.* For purposes of this section, the terms *amounts paid* and *payment* mean, in the case of a taxpayer using an accrual method of accounting, a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(e) *Effective date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(f) *Accounting method changes.* [Reserved]

§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to acquire or produce real or personal property. See § 1.263(a)–3 for the treatment of amounts paid to improve tangible property, § 1.263(a)–4 for the treatment of amounts paid to acquire or create intangibles, and § 1.263(a)–5 for the treatment of amounts paid to facilitate an acquisition of a trade or business, a change in capital structure of a business entity, and certain other transactions.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amounts paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property. Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property. Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(4) *Produce. Produce* means construct, build, install, manufacture, develop, create, raise, or grow. See § 1.263(a)–3 for capitalization rules applicable to amounts paid to improve property.

(c) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Internal Revenue Code or regulations other than section 162(a) or section 212 and the regulations under those sections.

(2) *Materials and supplies.* Nothing in this section changes the treatment of amounts paid for materials and supplies that are properly treated as deductions or deferred expenses, as appropriate, under § 1.162–3.

(d) *Acquired or produced tangible property*—(1) *In general*—(i) *Requirement of capitalization.* A taxpayer must capitalize amounts paid to acquire or produce real or personal property having a useful life substantially beyond the taxable year, including land and land improvements, buildings, machinery and equipment, and furniture and fixtures, and a unit of property (as determined under § 1.263(a)–3(d)(2)), having a useful life substantially beyond the taxable year. A taxpayer also must capitalize amounts paid to acquire real or personal property for resale and to produce real or personal property for sale. See section 263A for the scope of costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(ii) *Examples.* The following examples illustrate the rule of this paragraph (d)(1):

Example 1. Acquisition of personal property—coordination with § 1.162–3. X, an airline, operates a fleet of aircraft. X purchases and maintains in stock for repairs to its aircraft a great number of different expendable flight equipment spare parts (including cartridges, canisters, cylinders, and disks), based in part on the manufacturer's recommendations and in part on the airline's experience. The expendable flight equipment spare parts are carried on hand by X until they are installed in the particular type of aircraft for which purchased. The expendable flight equipment spare parts are of a type normally not repaired and reused. As these parts are taken from stock and used to repair aircraft, the stock supply is replenished by X purchasing new parts. In 2008, X purchases expendable flight equipment spare parts. X properly treats the amount paid for the expendable flight equipment spare parts as a deferred expense under § 1.162–3. Nothing in this section changes the treatment of the original acquisition cost as a deferred expense.

Example 2. Acquisition of personal property—coordination with § 1.162–3. X, an industrial laundry business, leases many products, including garments, linens, shop towels, continuous roll towels, and mops (rental items). X maintains a supply of rental items on hand to replace worn or damaged items. The rental items have useful lives of 12 months or less. In 2008, X purchases a large quantity of rental items. The amount paid for the rental items is properly treated by X as a deferred expense under § 1.162–3. Nothing in this section changes the treatment of the original acquisition cost as a deferred expense.

Example 3. Acquisition of personal property. In 2008, X purchases new cash registers, which have a useful life substantially beyond the taxable year, for use in its retail store located in a leased space in a shopping mall. X must capitalize under this paragraph (d)(1) the amount paid to purchase each cash register.

Example 4. Relocation and installation of personal property. Assume the same facts as in *Example 3*, except that X's lease expires in 2009 and X decides to relocate its retail store to a different building. In addition to various other costs, X pays $5,000 to move the cash registers and $1,000 to reinstall them in the other store. X is not required to capitalize under this paragraph (d)(1) the $5,000 amount paid for moving the cash registers; however, X must capitalize under this paragraph (d)(1) the $1,000 amount paid to reinstall the cash registers in its other store because, under paragraph (b)(4) of this section, installation costs are production costs.

Example 5. Acquisition of land. X purchases a parcel of undeveloped real estate. X must capitalize under this paragraph (d)(1) the amount paid to acquire the real estate. See § 1.263(a)–2(d)(3) for the treatment of amounts paid to facilitate the acquisition of real property.

Example 6. Acquisition of building. X purchases a building. X must capitalize under this paragraph (d)(1) the amount paid to acquire the building. See § 1.263(a)–2(d)(3) for the treatment of amounts paid to facilitate the acquisition of real property.

Example 7. Acquisition of property for resale. X purchases goods for resale. X must capitalize under this paragraph (d)(1) the amounts paid to acquire the goods. See section 263A for the treatment of amounts paid to acquire property for resale.

Example 8. Production of property for sale. X produces goods for sale. X must capitalize under this paragraph (d)(1) the amount paid to produce the goods. See section 263A for the treatment of amounts paid to produce property.

Example 9. Production of building. X constructs a building. X must capitalize under this paragraph (d)(1) the amount paid to construct the building. See section 263A

for the treatment of amounts paid to produce real property.

Example 10. Acquisition of assets constituting a trade or business. Y owns tangible and intangible assets that constitute a trade or business. X purchases all the assets of Y in a taxable transaction. X must capitalize under this paragraph (d)(1) the amount paid for the tangible assets of Y. See § 1.263(a)–4 for the treatment of amounts paid to acquire intangibles and § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business. See section 1060 for special allocation rules for certain asset acquisitions.

(2) *Defense or perfection of title to property*—(i) *In general.* Amounts paid to defend or perfect title to real or personal property constitute amounts paid to acquire or produce property within the meaning of this section and must be capitalized. See section 263A for the scope of costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(ii) *Examples.* The following examples illustrate the rule of this paragraph (d)(2):

Example 1. Amounts paid to contest condemnation. X owns real property located in County. County filed an eminent domain complaint condemning a portion of X's property to use as a roadway. X hired an attorney to contest the condemnation. Amounts paid by X to the attorney must be capitalized because they were to defend X's title to the property.

Example 2. Amounts paid to invalidate ordinance. X is in the business of quarrying and supplying sand and stone in a certain municipality. Several years after X established its business, the municipality in which it was located passed an ordinance that prohibited the operation of X's business. X incurred attorney's fees in a successful prosecution of a suit to invalidate the municipal ordinance. X prosecuted the suit to preserve its business activities and not to defend X's title in the property. Therefore, attorney's fees paid by X are not required to be capitalized under this paragraph (d)(2). However, under section 263A, all indirect costs, including otherwise deductible costs, that directly benefit or are incurred by reason of the taxpayer's production activities must be capitalized to the property produced for sale. Therefore, because the amounts paid to invalidate the ordinance are incurred by reason of X's production activities, the amounts paid must be capitalized under section 263A to the property produced for sale by X.

Example 3. Amounts paid to challenge building line. The board of public works of a municipality established a building line across X's business property, adversely affecting the value of the property. X incurred legal fees in unsuccessfully litigating the establishment of the building line. Amounts paid by X to the attorney must be capitalized because they were to defend X's title to the property.

(3) *Transaction costs*—(i) *In general.* A taxpayer must capitalize amounts paid to facilitate the acquisition of real or personal property, including shipping costs, bidding costs, sales and transfer taxes, legal and accounting fees, title fees, engineering fees, survey costs, inspection costs, appraisal fees, recording fees, application fees, commissions, and compensation for the services of a qualified intermediary or other facilitator of an exchange under section 1031. See § 1.263(a)–5 for the treatment of amounts paid to facilitate the acquisition of assets that constitute a trade or business. See section 263A for the scope of costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(ii) *Examples.* The following examples illustrate the rule of this paragraph (d)(3):

Example 1. Legal fees, taxes, and commissions to facilitate an acquisition. X purchases a building and pays legal fees, sales taxes, and sales commissions to facilitate the acquisition. X must capitalize the amounts paid for legal fees, sales taxes, and sales commissions.

Example 2. Moving costs to facilitate an acquisition. X purchases all the assets of Y and, in connection with the purchase, hires a transportation company to move storage tanks from Y's plant to X's plant. X must capitalize the amount paid to move the tanks from Y's plant to X's plant because the amount paid facilitates the acquisition of the storage tanks.

(4) *12-month rule*—(i) *In general.* Except as otherwise provided in this paragraph (d)(4), an amount paid for the acquisition or production (including any amount paid to facilitate the acquisition or production) of a unit of property (as determined under § 1.263(a)–3(d)(2)) with an economic useful life (as defined in § 1.263(a)–3(f)(2)) of 12 months or less is not a capital expenditure under paragraph (d) of this section.

(ii) *Coordination with section 461.* In the case of a taxpayer using an accrual method of accounting, the rules of this paragraph (d)(4) do not affect the determination of whether a liability is incurred during the taxable year, including the determination of whether economic performance has occurred with respect to the liability. See § 1.461–4 for rules relating to economic performance.

(iii) *Exceptions to 12-month rule.* The 12-month rule in paragraph (d)(4)(i) of this section does not apply to the following:

(A) Amounts paid for property that is or will be included in property produced for sale or property acquired for resale;

(B) Amounts paid to improve property under § 1.263(a)–3;

(C) Amounts paid for land; and

(D) Amounts paid for any component of a unit of property.

(iv) *Character of property subject to 12-month rule.* Property to which a taxpayer applies the 12-month rule contained in paragraph (d)(4)(i) of this section is not treated upon sale or disposition as a capital asset under section 1221 or as property used in the trade or business under section 1231.

(v) *Election to capitalize.* A taxpayer may elect not to apply the 12-month rule contained in paragraph (d)(4)(i) of this section with regard to a unit of property. An election made under this paragraph (d)(4)(v) applies to any unit of property during the taxable year to which paragraph (d)(4)(i) of this section would apply (but for the election under this paragraph (d)(4)(v)). A taxpayer makes the election by treating the amount paid as a capital expenditure in its timely filed original Federal income tax return (including extensions) for the taxable year in which the amount is paid. In the case of a pass-through entity, the election is made by the pass-through entity, and not by the shareholders, partners, etc. An election may not be made through the filing of an application for change in accounting method or by an amended Federal income tax return and an election may not be revoked.

(vi) *Examples.* The rules of this paragraph (d)(4) are illustrated by the following examples, in which it is assumed (unless otherwise stated) that the taxpayer is a calendar year, accrual method taxpayer that has not elected out of the 12-month rule under paragraph (d)(4)(v) of this section with regard to the unit of property, and that none of the property is materials and supplies under § 1.162–3:

Example 1. Production cost. X corporation manufactures and sells aluminum storm windows and doors. To conduct its business, X purchases strips of aluminum called extrusions and applies paint electrostatically to the extrusions through a complex process. In 2008, X installs a leaching pit to provide a draining area for liquid waste produced in the process of painting the extrusions. X previously had dumped this waste into a creek bed, but the local water department ordered it to cease this practice. The economic useful life of the leaching pit is 12 months, after which time the factory will be connected to the local sewer system. Assume that the leaching pit is the unit of property, as determined under § 1.263(a)–3(d)(2). X is not required to capitalize under paragraph (d) of this section the amount paid to produce the leaching pit because the useful life of the leaching pit is 12 months or less. However, under section 263A, all indirect costs,

including otherwise deductible costs, that directly benefit or are incurred by reason of the taxpayer's manufacturing activities must be capitalized to the property produced for sale. Therefore, because the amounts paid for the leaching pit are incurred by reason of X's manufacturing operations, the amounts paid must be capitalized under section 263A to the property produced for sale by X.

Example 2. Acquisition or production cost. X purchases or produces jigs, dies, molds, and patterns for use in the manufacture of motor vehicles and motor vehicle parts. The economic useful life of the jigs, dies, molds, and patterns is 12 months. Assume each jig, die, mold, and pattern is a separate unit of property, as determined under § 1.263(a)–3(d)(2). X is not required to capitalize under paragraph (d) of this section the amounts paid to produce or purchase the jigs, dies, molds, and patterns because the economic useful life is 12 months or less. However, under section 263A, all indirect costs, including otherwise deductible costs, that directly benefit or are incurred by reason of the taxpayer's manufacturing activities must be capitalized to the property produced for sale. Therefore, because the amounts paid for the jigs, dies, molds, and patterns are incurred by reason of X's manufacturing operations, the amounts paid must be capitalized under section 263A to the property produced for sale by X.

Example 3. Acquisition or production cost. Assume the same facts as in *Example 2,* but the economic useful life of the jigs, dies, molds, and patterns is 3 years. X is required to capitalize under paragraph (d) of this section the amounts paid to produce or purchase the jigs, dies, molds, and patterns because the economic useful life is more than 12 months.

Example 4. Acquisition cost. X corporation is an interstate motor carrier. On December 1, 2008, X purchases, pays for, and takes delivery of truck tires with an economic useful life of 12 months. Assume X does not use the original tire capitalization method described in Rev. Proc. 2002–27 (2002–1 C.B. 802) (see § 601.601(d)(2) of this chapter). Also assume that each tire is a separate unit of property, as determined under § 1.263(a)–3(d)(2). X is not required under paragraph (d) of this section to capitalize the amount paid for the tires because the economic useful life of the tires is 12 months or less.

Example 5. Transaction costs. Assume the same facts as in *Example 4,* but in addition to the amount paid for the tires, X also pays sales tax and delivery charges for the tires. X is not required to capitalize under paragraph (d) of this section the sales tax and delivery charges because they were paid to facilitate the acquisition of property with an economic useful life of 12 months or less.

Example 6. Coordination with section 461 fixed liability rule. Assume the same facts as in *Example 4,* except that instead of purchasing the tires on December 1, 2008, X enters into a contract with the tire manufacturer on that date to purchase tires from the manufacturer in 2009. X purchases, pays for, and takes delivery of the tires on March 31, 2009. X does not incur a liability under section 461 for the tires in 2008 because X does not have a fixed liability with respect to the tires until 2009. When X incurs the amount in 2009, X is not required under paragraph (d) of this section to capitalize that amount.

Example 7. Coordination with section 461 economic performance rule. Assume the same facts as in *Example 4,* except that the tires are not delivered to X until March 31, 2009. X does not incur a liability under section 461 for the tires in 2008 because economic performance does not occur with respect to the liability until the property is provided to X in 2009. See § 1.461–4(d)(2). When X incurs the amount in 2009, X is not required under paragraph (d) of this section to capitalize that amount.

Example 8. Election not to capitalize. Assume the same facts as in *Example 4,* except that X elects under paragraph (d)(4)(v) of this section not to apply the 12-month rule contained in paragraph (d)(4)(i) of this section to the tires purchased on December 1, 2008. X must capitalize under paragraph (d) of this section the amount paid for the tires.

Example 9. Exception to 12-month rule '' property acquired for resale. Assume the same facts as in *Example 4,* except that X purchases the tires for resale. The 12-month rule in paragraph (d)(4)(i) of this section does not apply because the tires are property acquired for resale. Thus, X is required under paragraph (d) of this section to capitalize the amount paid for the tires.

Example 10. Exception to 12-month rule—component of property. Assume the same facts as in *Example 4,* except that the tires are the first set of tires to be installed on a truck tractor acquired by X and X uses the original tire capitalization method described in Rev. Proc. 2002–27 (see § 601.601(d)(2) of this chapter) so that the truck tractor (including the tires) is the unit of property, as determined under § 1.263(a)–3(d)(2). Also assume that the truck tractor has an economic useful life of more than 12 months and that the invoice for the acquisition of the truck tractor separately states the cost of tires and various other components of the truck tractor. X is required under paragraph (d) of this section to capitalize the amount paid for the truck tractor because the economic useful life of the truck tractor is more than 12 months. Further, X may not use the 12-month rule to currently deduct the amount paid for the tires or any other component of the truck tractor, regardless that some components may have an economic useful life of 12 months or less and regardless that the cost of individual components is separately stated in the invoice.

(e) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs. See section 263A for the treatment of amounts referred to in this section as well as other amounts paid in connection with the production of real property and personal property, including films, sound recordings, video tapes, books, or similar properties.

(f) *Recovery of capitalized amounts—*(1) *In general.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Internal Revenue Code and regulation provisions relating to the use, sale, or disposition of property. For example, §§ 1.162–4 and 1.263(a)–3 determine whether amounts capitalized under this section § 1.263(a)–2 for property that is used to replace a component of a unit of property are repair or maintenance expenses or capitalized as an improvement to the unit of property.

(2) *Examples.* The following examples illustrate the rule of this paragraph (f)(1) and assume that the taxpayer does not treat the acquired property as materials and supplies under § 1.162–3:

Example 1. Recovery when property placed in service. X owns a 10-unit apartment building. The refrigerator in one of the apartments stops functioning and X purchases a new refrigerator to replace the old one. X pays for the acquisition, delivery, and installation of the new refrigerator. Assume the refrigerator is the unit of property, as determined under § 1.263(a)–3(d)(2). Section 1.263(a)–2(d) requires capitalization of amounts paid for the acquisition, delivery, and installation of the refrigerator. Under this paragraph (f), the capitalized amounts are recovered through depreciation when the refrigerator is placed in service by X.

Example 2. Recovery when property used in a repair. Assume the same facts as in *Example 1,* except that a window in one of the apartments needs to be replaced. X pays for the acquisition, delivery, and installation of a new window. Assume the window is a structural component of the apartment building and that the apartment building is the unit of property, as determined under § 1.263(a)–3(d)(2). Section 1.263(a)–2(d) requires capitalization of amounts paid for the acquisition and delivery of the window because the window is property with a useful life substantially beyond the end of the taxable year. Assume the replacement of the old window with the new one does not improve the apartment building under § 1.263(a)–3. Under this paragraph (f), the capitalized amounts paid to acquire the window are recovered as ordinary and necessary repair expenses under § 1.162–4 when the window is used in the repair by its installation in the apartment building.

Example 3. Recovery when property used in a repair; coordination with section 263A. Assume the same facts as in *Example 2,* except that the window that is replaced is in an office in a plant where X manufactures widgets for sale. Section 1.263(a)–2(d) requires capitalization of amounts paid to

produce inventory. Under section 263A, all indirect costs, including otherwise deductible repair costs that directly benefit or are incurred by reason of the production of inventory must be capitalized to the inventory produced. Although the repair cost otherwise would be deductible as an expense under § 1.162–4, X must determine whether the cost of the repair, or an allocable portion thereof, is required to be capitalized to the inventory produced as an indirect expense that directly benefits or is incurred by reason of the production activities. Any portion of the repair capitalized to inventory is recovered through cost of goods at the time the property is sold or otherwise disposed of in accordance with the taxpayer's method of accounting for inventories.

(g) *Effective date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(h) *Accounting method changes.* [Reserved]

§ 1.263(a)–3 Amounts paid to improve tangible property.

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to improve tangible property. Paragraph (b) of this section contains definitions. Paragraph (c) of this section contains rules for coordinating this section with other provisions of the Internal Revenue Code. Paragraph (d) of this section provides rules for determining the treatment of amounts paid to improve tangible property, including rules for determining the appropriate unit of property. Paragraph (e) of this section contains rules for determining whether amounts paid materially increase the value of the unit of property. Paragraph (f) of this section contains rules for determining whether amounts paid restore the unit of property. Paragraph (g) of this section describes an optional repair allowance method.

(b) *Definitions.* For purposes this section, the following definitions apply:

(1) *Amount paid.* In the case of a taxpayer using an accrual method of accounting, the terms *amounts paid* and *payment* mean a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(2) *Personal property. Personal property* means tangible personal property as defined in § 1.48–1(c).

(3) *Real property. Real property* means land and improvements thereto, such as buildings or other inherently permanent structures (including items that are structural components of such buildings or structures) that are not personal property as defined in paragraph (b)(2) of this section. Local law is not controlling in determining whether property is real property for purposes of this section.

(c) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* Nothing in this section changes the treatment of any amount that is specifically provided for under any provision of the Internal Revenue Code or regulations (other than section 162(a) or section 212 and the regulations under those sections).

(2) *Example.* The following example illustrates the rules of this paragraph (c):

Example. Railroad rolling stock. X is a railroad that properly treats amounts paid for the rehabilitation of railroad rolling stock as deductible expenses under section 263(d). X is not required to capitalize the amounts paid because nothing in this section changes the treatment of amounts specifically provided for under section 263(d).

(d) *Improved property*—(1) *Capitalization rule.* Except as provided in the repair allowance method in paragraph (g) of this section, a taxpayer must capitalize the aggregate of related amounts paid to improve a unit of property (including a unit of property for which the acquisition or production costs were deducted under the 12-month rule in § 1.263(a)–2(d)(4)), whether the improvements are made by the taxpayer or by a third party. See section 263A for the scope of costs required to be capitalized to property produced by the taxpayer or to property acquired for resale; section 1016 for adding capitalized amounts to the basis of the unit of property; and section 168(i)(6) for the treatment of additions or improvements to a unit of property. For purposes of this paragraph (d), a unit of property is improved if the amounts paid—

(i) Materially increase the value of the unit of property (see paragraph (e) of this section); or

(ii) Restore the unit of property (see paragraph (f) of this section).

(2) *Determining the appropriate unit of property*—(i) *In general.* The unit of property rules in this paragraph (d)(2) apply only for purposes of section 263(a) and §§ 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3, and not any other Internal Revenue Code or regulation section. Under this paragraph (d)(2), the appropriate unit of property is initially determined by applying the rules in paragraph (d)(2)(ii) of this section, except as provided in paragraph (d)(2)(iv) of this section (relating to buildings and structural components). The initial unit of property determination is further analyzed in accordance with the appropriate hierarchical category described in one of paragraphs (d)(2)(iii) through (d)(2)(vi) of this section and by applying the additional rule in paragraph (d)(2)(vii) of this section. The specific rules contained in paragraphs (d)(2)(iii) through (d)(2)(vii) of this section dictate whether one or more components of the initial unit of property determination must be treated as separate units of property.

This paragraph (d)(2) applies to all real and personal property, other than network assets. For purposes of this paragraph (d)(2), *network assets* means railroad track, oil and gas pipelines, water and sewage pipelines, power transmission and distribution lines, and telephone and cable lines that are owned or leased by taxpayers in each of those respective industries. The term includes, for example, trunk and feeder lines, pole lines, and buried conduit. It does not include property that would be included as a structural component of a building under paragraph (d)(2)(iv), nor does it include separate property that is adjacent to, but not part of a network asset, such as bridges, culverts, or tunnels.

(ii) *Initial unit of property determination.* Except for property described in paragraph (d)(2)(iv) of this section (regarding buildings and structural components), the unit of property determination under this paragraph (d)(2) begins by identifying property that consists entirely of components that are functionally interdependent. Components of property are functionally interdependent if the placing in service of one component by the taxpayer is dependent on the placing in service of the other component by the taxpayer. For purposes of this section, property that is aggregated and subject to a general asset account election may not be treated as a single unit of property.

(iii) *Category I: Taxpayers in regulated industries.* In the case of a taxpayer engaged in a trade or business in a regulated industry, the unit of property is the USOA (uniform system of accounts) unit of property. For purposes of this section, a regulated industry is an industry for which a Federal regulator (including any Federal department, agency, commission, board, or similar entity) has a USOA identifying a particular unit of property (USOA unit of property). This rule applies to any taxpayer engaged in a trade or business in the regulated industry, regardless of whether the taxpayer is subject to the regulatory accounting rules of the Federal regulator. The unit of property

determination made under this paragraph (d)(2)(iii) is subject to paragraph (d)(2)(vii) of this section, which may require one or more components to be treated as separate units of property.

(iv) *Category II: Buildings and structural components.* In the case of a building (as defined in § 1.48–1(e)(1)) other than that described in paragraph (d)(2)(iii) of this section, the building and its structural components (as defined in § 1.48–1(e)(2)) are a single unit of property. The unit of property determination made under this paragraph (d)(2)(iv) is subject to paragraph (d)(2)(vii) of this section, which may require one or more components to be treated as separate units of property.

(v) *Category III: Other personal property.* In the case of personal property other than that described in paragraph (d)(2)(iii) of this section, the unit of property determination must be made on the basis of the four factors listed in this paragraph (d)(2)(v). These four factors are the exclusive factors under this paragraph (d)(2)(v). No one factor is determinative and it is not intended that a determination be made on the basis of the number of factors indicating that a component is, or is not, a separate unit of property. The unit of property determination made under this paragraph (d)(2)(v) is subject to paragraph (d)(2)(vii) of this section, which may require one or more components to be treated as separate units of property. The following factors must be taken into account:

(A) Whether the component is—

(*1*) Marketed separately to the taxpayer by a party other than the seller/lessor of the property of which the component is a part at the time the property is initially acquired or leased;

(*2*) Acquired or leased separately by the taxpayer from a party other than the seller/lessor of the property of which the component is a part at the time the property is initially acquired or leased;

(*3*) Subject to a separate warranty contract (from a party other than the seller/lessor of the property of which the component is a part);

(*4*) Subject to a separate maintenance manual or written maintenance policy;

(*5*) Appraised separately; or

(*6*) Sold or leased separately by the taxpayer to another party;

(B) Whether the component is treated as a separate unit of property in industry practice or by the taxpayer in its books and records;

(C) Whether the taxpayer treats the component as a rotable part (a part that is removable from property, repaired or improved, and either immediately reinstalled on other property or stored for later installation); and

(D) Whether the property of which the component is a part generally functions for its intended use without the component property.

(vi) *Category IV: Other real property.* In the case of real property other than that described in paragraphs (d)(2)(iii) and (d)(2)(iv) of this section, the unit of property determination must be made on the basis of all the facts and circumstances. The unit of property determination made under this paragraph (d)(2)(vi) is subject to paragraph (d)(2)(vii) of this section, which may require one or more components to be treated as separate units of property.

(vii) *Additional rule.* If the taxpayer properly treats a component as a separate unit of property for any Federal income tax purpose, the taxpayer must treat the component as a separate unit of property for purposes of this paragraph (d)(2). For purposes of paragraph (d)(2), the term *any Federal income tax purpose* includes, but is not limited to, the use of different placed-in-service dates (other than the use of a new placed-in-service date for an improvement (as determined under this section) to the unit of property or a different placed-in-service date for a particular floor of a building) or different classes of property as set forth in section 168(e) (MACRS classes), for the component and the property of which the component is a part. If the taxpayer properly recognizes a loss under section 165, or under another applicable provision, from a retirement of a component of property or from the worthlessness or abandonment of a component of property, the taxpayer must treat the component as a separate unit of property for purposes of this paragraph (d)(2). Therefore, any property that replaces the component also will be treated as a separate unit of property. See § 1.263(a)–2(d)(1). For purposes of this paragraph (d)(2), merely claiming a tax credit related to tangible property does not constitute treatment of that property as a separate unit of property for a Federal income tax purpose.

(viii) *Examples.* The rules of this paragraph (d)(2) are illustrated by the following examples, in which it is assumed (unless otherwise stated) that the taxpayer has not made a general asset account election with regard to the property and that paragraph (d)(2)(vii) of this section does not require the use of a different unit of property:

Example 1. Category I. X is an electric utility company that operates a power plant to generate electricity. X's operation previously was regulated by the Federal Energy Regulatory Commission (FERC) but, for various reasons, is no longer subject to regulation by FERC. Under FERC's USOA, each turbine, economizer, generator, and pulverizer is treated as a separate unit of property for regulatory accounting purposes. The initial unit of property determined under paragraph (d)(2)(ii) of this section is the entire power plant, which consists entirely of components that are functionally interdependent. The power plant must next be analyzed under paragraph (d)(2)(iii) of this section because X is engaged in a trade or business in an industry for which a Federal regulator has a USOA. Under the rules in that paragraph, X must treat each turbine, economizer, generator, and pulverizer as a separate unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 2. Category I. X is a Class I railroad. All Class I railroads are regulated by the Surface Transportation Board (STB). Under STB's USOA, each locomotive and each freight car is treated as a separate unit of property for regulatory accounting purposes. Although each locomotive consists of various components, such as an engine, generators, batteries, trucks, etc., those components are functionally interdependent. Thus, the locomotive is an initial unit of property as determined under paragraph (d)(2)(ii) of this section. Similarly, each freight car consists entirely of functionally interdependent components and, thus, each freight car is an initial unit of property under paragraph (d)(2)(ii) of this section. Each locomotive and freight car must next be analyzed under paragraph (d)(2)(iii) of this section because X is engaged in a trade or business in an industry for which a Federal regulator has a USOA. Under the rules in that paragraph, X must treat each locomotive and each freight car as a separate unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 3. Category I. Assume the same facts as in Example 2, except that X is a Class II railroad. The STB does not regulate Class II railroads. However, because X is engaged in a trade or business in an industry (the railroad industry) for which a Federal regulator has a USOA, the rules in paragraph (d)(2)(iii) of this section apply, regardless of whether X is subject to those rules. Based on these facts, X must treat each locomotive and each freight car as a separate unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 4. Category I. X is a telecommunications company regulated by the Federal Communications Commission (FCC) and subject to a USOA for telephone companies. The assets of X include a telephone central office switching center, which contains numerous switches and various other switching equipment that all work together to provide telephone service to customers. The initial unit of property determined under paragraph (d)(2)(ii) of this section is the central office switching center, which consists entirely of components that

are functionally interdependent. The telecommunications system must next be analyzed under paragraph (d)(2)(iii) of this section because X is engaged in a trade or business in an industry for which a Federal regulator has a USOA. Under the rules in that paragraph, X must treat each switch and/or piece of equipment as defined in the USOA of the FCC and used in the central office operation as a separate unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 5. Category II. X owns a manufacturing building containing various types of manufacturing equipment that are not structural components of the manufacturing building. Because the property is a building, as defined in § 1.48–1(e)(1), paragraph (d)(2)(ii) of this section does not apply and the property must be analyzed under paragraph (d)(2)(iv) of this section. Under the rules in that paragraph, X must treat the manufacturing building and its structural components as a single unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes. The appropriate unit of property determination for the manufacturing equipment must be made separately under paragraph (d)(2)(v) of this section.

Example 6. Category III; additional rule. Assume the same facts as in *Example 5,* except that X does a cost segregation study of the manufacturing building and properly determines that refrigeration equipment used to create a walk-in freezer in the manufacturing building is section 1245 property as defined in section 1245(a)(3). The refrigeration equipment is not part of the HVAC system that relates to the general operation or maintenance of the building. For Federal income tax purposes, X properly treats the refrigeration equipment as a separate unit of property for depreciation purposes. The rules of paragraph (d)(2)(v) of this section apply to determine whether the refrigeration equipment, or some smaller component, is the appropriate unit of property. In this example, assume that no components of the refrigeration equipment meet any of the facts and circumstances listed in paragraph (d)(2)(v) of this section. Based on these facts, X must treat the refrigeration equipment as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 7. Category III; additional rule. Assume the same facts as in *Example 6,* except that the refrigeration equipment for the walk-in freezer ceases to function. X decides not to repair the refrigeration equipment, but to replace it altogether. X abandons the refrigeration equipment for the walk-in freezer and properly recognizes a loss under section 165 from the abandonment of the refrigeration equipment. Therefore, X must treat the refrigeration equipment for the walk-in freezer as a separate unit of property for determining whether amounts paid to replace the equipment must be capitalized for Federal income tax purposes. See § 1.263(a)–2(d)(1).

Example 8. Category III. (i) X is a commercial airline engaged in the business of transporting passengers and freight throughout the United States and abroad. To conduct its business, X owns or leases various types of aircraft. X purchases the aircraft engine separately at the time the aircraft is acquired. The engine is subject to a separate warranty and written maintenance policy provided by the engine manufacturer. For financial accounting purposes, X accounts for each type of aircraft by maintaining separate accounts on its books for each type of airframe and engine in its fleet. To perform maintenance on an engine, X removes the engine from the aircraft and replaces it with another used engine that has returned from a maintenance visit.

(ii) The initial unit of property determined under paragraph (d)(2)(ii) of this section is the aircraft (and not the entire fleet of aircraft), which consists entirely of components that are functionally interdependent. The aircraft must next be analyzed under one of paragraphs (d)(2)(iii) through (d)(2)(vi) of this section. Although X is engaged in a trade or business in an industry regulated by the Federal Aviation Administration (FAA), the FAA does not have a USOA. Therefore, the rules of paragraph (d)(2)(iii) of this section do not apply to X; instead, the rules of paragraph (d)(2)(v) of this section apply to determine whether the entire aircraft, or the engine, is the appropriate unit of property. In this *Example 8,* the aircraft engine is acquired separately, is subject to a separate warranty and maintenance policy, is treated separately for financial accounting purposes, and is rotable. Based on these facts, X must treat the engine as the unit of property for determining whether an amount paid improves the engine for Federal income tax purposes. X must treat the aircraft without the engine as a unit of property for determining whether an amount paid improves the aircraft for Federal income tax purposes.

Example 9. Category III. X is a corporation that owns a small aircraft for use in its trade or business. X performs required maintenance on its aircraft engines. The aircraft engine is not marketed, purchased, leased, appraised, or sold separately, but it is subject to a separate warranty and written maintenance policy provided by the engine manufacturer. For financial accounting purposes, X does not maintain separate accounts on its books for individual engines. X does not treat the engine as a rotable part. The initial unit of property determined under paragraph (d)(2)(ii) of this section is the aircraft, which consists entirely of components that are functionally interdependent. The aircraft must next be analyzed under paragraph (d)(2)(v) of this section to determine whether the entire aircraft, or the engine, is the appropriate unit of property. Based on these facts, the engine is not a separate unit of property. Therefore, X must treat the aircraft, including the aircraft engine, as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 10. Category III. X is a towboat operator that owns and leases a fleet of towboats. X performs maintenance on its towboat engines every 3 to 4 years, in accordance with the engine manufacturer's maintenance manuals. Towboat engines are not marketed, purchased, leased, appraised, or sold separately; however, the engines are subject to a separate warranty and written maintenance policy provided by the engine manufacturer. For financial accounting purposes, X does not maintain separate accounts on its books for individual engines. X does not treat the engine as a rotable part. The initial unit of property determined under paragraph (d)(2)(ii) of this section is the towboat (and not the entire fleet of towboats), which consists entirely of components that are functionally interdependent. The towboat must next be analyzed under paragraph (d)(2)(v) of this section. Based on these facts, the engine is not a separate unit of property. Therefore, X must treat the towboat, including the towboat engine, as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 11. Category III. X purchases a car to use in X's taxi service. The invoice received by X for the purchase of the car separately lists several options, including air conditioning, automatic transmission, antilock braking system, side impact air bags, power group, and special alloy wheels. Under paragraph (d)(2)(ii) of this section, the initial unit of property is the car because the options are functionally interdependent with the car. The options are not subject to separate warranties. X is an individual and does not keep books and records other than for tax purposes. For depreciation purposes, X properly treats the car and options as one unit of property. X does not treat any of the options as rotable parts. Based on these facts, the options are not separate units of property. X must treat the car, including the options, as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 12. Category III. X is a common carrier that owns a fleet of fuel hauling trucks and periodically performs maintenance on its truck engines. The entire fleet of trucks is subject to a general asset account election, one for the truck trailers and one for the truck tractors. Under paragraph (d)(2)(ii) of this section, X may not treat the entire fleet as the unit of property. Instead, the initial units of property determined under paragraph (d)(2)(ii) of this section are each truck tractor and each truck trailer. Each tractor consists entirely of functionally interdependent components and each trailer consists entirely of functionally interdependent components. To determine whether the engine is a separate unit of property from the tractor, the factors in paragraph (d)(2)(v) of this section apply. The engines are marketed separately from the tractor and are subject to a separate warranty and written maintenance policy provided by the engine manufacturer. The engines are not treated as a separate unit of property in industry practice or by X in its books and records. The engine is removed from the tractor, repaired or improved, and stored for later installation on another tractor. Based on these facts, the engine is a separate unit of property. Therefore, X must treat the engine as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 13. Category III. Assume the same facts as in *Example 12*, except that the inquiry is whether the oil filter in the tractor engine is a separate unit of property. The oil filter is not marketed, acquired, leased, appraised, or sold separately, nor is it subject to a separate warranty or maintenance manual. The filter is not treated as a separate unit of property in industry practice or by X in its books and records, nor is it treated as a rotable part. Based on these facts, the oil filter is not a separate unit of property. Therefore, X must treat the engine, including the oil filter, as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 14. Category III. (i) X manufactures and sells computers and computer equipment. It also operates a separate computer maintenance business, for which X maintains pools of rotable spare parts that are primarily used to repair computer equipment purchased or leased by its customers. Most of X's computer maintenance business is conducted pursuant to standardized maintenance agreements that obligate X to provide all parts and labor, product upgrades, preventive maintenance, and telephone assistance necessary to keep a customer's computer operational for the duration of the contract (usually one year) in exchange for a predetermined fee. In its computer maintenance business, X sends technicians to its customer's location, who use the supply of rotable spare parts to diagnose problems in the customer's equipment, and then exchange the working parts for any malfunctioning parts. A customer's part that is identified as the cause of the malfunction is replaced with the identical functioning part from X's rotable spare parts pool. The malfunctioning part removed from the customer's equipment is then repaired and placed in X's rotable spare parts pool for continued use in the computer maintenance business.

(ii) Under paragraph (d)(2)(ii) of this section, X may not treat the entire pool of rotable spare parts as the unit of property. Instead, the initial unit of property determined under paragraph (d)(2)(ii) of this section is each rotable spare part because each part consists entirely of functionally interdependent components. Assume for purposes of this *Example 14* that paragraph (d)(2)(v) of this section does not require any components of the rotable spare parts to be treated as separate units of property. Based on these facts, the entire pool of spare parts is not the unit of property. Therefore, X must treat each rotable spare part as a unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

Example 15. Category III. (i) X is a dentist and operates a small dental clinic. On March 1, 2008, X purchases a new laptop computer, with a one-year warranty, for use in the dental business. On May 1, 2009, after the warranty has expired, the computer malfunctions and X contacts the manufacturer's computer maintenance shop for assistance. The maintenance shop sends a technician to X's dental clinic, who uses a supply of rotable spare parts to diagnose problems in X's computer. The technician determines that the circuit board must be replaced and exchanges X's malfunctioning circuit board with the identical functioning circuit board from the computer maintenance operation's rotable spare parts pool. The malfunctioning circuit board removed from X's computer is then repaired and placed in the manufacturer's rotable spare parts pool for continued use in the computer maintenance business.

(ii) The initial unit of property determined under paragraph (d)(2)(ii) of this section is the computer, which consists entirely of components (circuit board or motherboard, central processing unit or CPU, hard drive, RAM, keyboard, monitor, case, etc.) that are functionally interdependent. To determine whether the circuit board is a separate unit of property from the computer, the factors in paragraph (d)(2)(v) of this section apply. The circuit board was not marketed separately to X or acquired separately by X, nor is it subject to a separate warranty. The CPU, however, was marketed separately to the taxpayer, but not acquired separately. No component, including the circuit board and CPU of the laptop computer, is treated as a separate unit of property by X in its books and records, nor does X treat any component as a rotable part. The computer does not function for its intended use without the circuit board and the CPU. Based on these facts, neither the circuit board nor the CPU is a separate unit of property. X must treat the entire laptop computer, including the circuit board and CPU, as the unit of property for determining whether an amount paid improves the unit of property for Federal income tax purposes.

(3) *Compliance with regulatory requirements.* For purposes of this section, a Federal, state, or local regulator's requirement that a taxpayer perform certain repairs or maintenance on a unit of property to continue operating the property is not relevant in determining whether the amount paid improves the unit of property.

(4) *Unavailability of replacement parts.* For purposes of this section, if a taxpayer needs to replace part of a unit of property that cannot practicably be replaced with the same type of part (for example, because of technological advancements or product enhancements), the replacement of the part with an improved but comparable part does not, by itself, result in an improvement to the unit of property.

(5) *Repairs performed during an improvement*—(i) *In general.* Repairs that do not directly benefit or are not incurred by reason of an improvement are not required to be capitalized under section 263(a), regardless of whether they are made at the same time as an improvement. See section 263A for rules requiring capitalization of all direct costs of an improvement and all indirect costs that directly benefit or are incurred by reason of the improvement.

(ii) *Exception for individuals.* A taxpayer who is an individual may capitalize amounts paid for repairs that are made at the same time as substantial capital improvements to property not used in the taxpayer's trade or business or for the production of income if the repairs are done as part of a remodeling or restoration of the taxpayer's residence.

(e) *Value*—(1) *In general.* A taxpayer must capitalize amounts paid that materially increase the value of a unit of property. An amount paid materially increases the value of a unit of property only if it—

(i) Ameliorates a condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property, whether or not the taxpayer was aware of the condition or defect at the time of acquisition or production;

(ii) Is for work performed prior to the date the property is placed in service by the taxpayer (without regard to any applicable convention under section 168(d));

(iii) Adapts the unit of property to a new or different use (including a permanent structural alteration to the unit of property);

(iv) Results in a betterment (including a material increase in quality or strength) or a material addition (including an enlargement, expansion, or extension) to the unit of property; or

(v) Results in a material increase in capacity (including additional cubic or square space), productivity, efficiency, or quality of output of the unit of property.

(2) *Exception.* Notwithstanding the rules in paragraph (e)(1)(i) through (e)(1)(v) of this section, an amount paid does not result in a material increase in value to a unit of property if the economic useful life (as defined in § 1.263(a)–3(f)(2)) of the unit of property is 12 months or less and the taxpayer did not elect to capitalize the amounts paid originally for the unit of property.

(3) *Appropriate comparison.* For purposes of paragraphs (e)(1)(iv) and (e)(1)(v) of this section, in cases in which a particular event necessitates an expenditure, the determination of whether the amount paid materially increases the value of the unit of property is made by comparing the condition of the property immediately after the expenditure with the condition of the property immediately prior to the event necessitating the expenditure. When the event necessitating the expenditure is normal wear and tear to the unit of property, the condition of the property immediately prior to the event necessitating the expenditure is the

condition of the property after the last time the taxpayer corrected the effects of normal wear and tear (whether the amounts paid were for maintenance or improvements) or, if the taxpayer has not previously corrected the effects of normal wear and tear, the condition of the property when placed in service by the taxpayer.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e) and assume that the amounts paid are not required to be capitalized under any other provision of this section (paragraph (f), for example):

Example 1. Pre-existing condition. In 2008, X purchased a store located on 10 acres of land that contained underground gasoline storage tanks left by prior occupants. The tanks had leaked, causing soil contamination. X was not aware of the contamination at the time of purchase. When X discovered the contamination, it incurred costs to remediate the soil. For purposes of this *Example 1*, assume the 10 acres of land is the appropriate unit of property. The amounts paid for soil remediation must be capitalized as an improvement to the land because they ameliorated a condition or defect that existed prior to the taxpayer's acquisition of the land. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 2. Not a pre-existing condition; repair performed during an improvement. (i) X owned land on which it constructed a building in 1969 for use as a bank. The building was constructed with asbestos-containing materials. The health dangers of asbestos were not widely known when the building was constructed. The presence of asbestos did not necessarily endanger the health of building occupants. The danger arises when asbestos-containing materials are damaged or disturbed, thereby releasing asbestos fibers into the air (where they can be inhaled). In 1971, Federal regulatory agencies designated asbestos a hazardous substance. In 2008, X determined it needed additional space in its building to accommodate additional operations at its branch and decided to remodel the building. However, any remodeling work could not be undertaken without disturbing the asbestos-containing materials. The governmental regulations required that asbestos be removed if any remodeling was undertaking that would disturb asbestos-containing materials. Therefore, X decided to remove the asbestos-containing materials from the building in coordination with the overall remodeling project.

(ii) For purposes of this *Example 2*, assume that the building is the appropriate unit of property and that the amounts paid to remodel are required to be capitalized under § 1.263(a)–3. The amounts paid to remove the asbestos are not required to be capitalized as a separate improvement under paragraph (e)(1)(i) of this section because the asbestos, although later determined to be unsafe under certain circumstances, was not an inherent defect to the property. The removal of the asbestos, by itself, also did not result in a material increase in value under paragraphs (e)(1)(ii) through (e)(1)(v) of this section. Under paragraph (d)(5)(i) of this section, repairs that do not directly benefit or are not incurred by reason of an improvement are not required to be capitalized under section 263(a). Under section 263A, all indirect costs, including otherwise deductible repair costs, that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. The amounts paid to remove the asbestos were incurred by reason of the remodeling project, which was an improvement. Therefore, X must capitalize under section 263A to the remodeling improvement amounts paid to remove the asbestos.

Example 3. Work performed prior to placing the property in service. In 2008, X purchased a building for use as a business office. The building was in a state of disrepair. In 2009, X incurred costs to repair cement steps; shore up parts of the first and second floors; replace electrical wiring; remove and replace old plumbing; and paint the outside and inside of the building. Assume all the work was performed on the building or its structural components. In 2010, X placed the building in service and began using the building as its business office. For purposes of this Example 3, assume the building and its structural components are the appropriate unit of property. The amounts paid must be capitalized as an improvement to the building because they were for work performed prior to X's placing the building in service. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 4. Work performed prior to placing the property in service. In January 2008, X purchased new machinery for use in an existing production line of its manufacturing business. After the machinery was installed, X performed critical testing on the machinery to ensure that it was operational. On November 1, 2008, the new machinery became operational and, thus, the machinery was placed in service on November 1, 2008 (although X continued to perform testing for quality control). The amounts paid must be capitalized as an improvement to the machinery because they were for work performed prior to X's placing the machinery in service. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 5. New or different use. X is an interior decorating company and manufactures its own designs. In 2008, X decides to stop manufacturing and converts the manufacturing facility into a showroom for X's business. To convert the facility, X removes certain load-bearing walls and builds new load-bearing walls to provide a better layout for the showroom and its offices. As part of building the new walls, X moves or replaces electrical, cable, and telephone wiring and paints the walls. X also repairs the floors, builds a fire escape, and performs small carpentry jobs related to making the showroom accessible, including installing ramps and widening doorways. For purposes of this *Example 5*, assume the building and its structural components are the unit of property and that the work is performed on the structural components. The amounts paid by X to convert the manufacturing facility into a showroom must be capitalized as an improvement to the building because they adapted the building to a new or different use. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 6. New or different use. X owned a building consisting of five separate retail stores, each of which it rented to different tenants. In 2008, two of the stores rented became vacant and remained vacant for several months. One of the remaining tenants agreed to expand its occupancy to the two vacant stores, which adjoined its own retail store. X incurred costs to break down walls between the existing stores and construct an additional rear entrance. For purposes of this *Example 6*, assume the building and its structural components are the appropriate unit of property. The amounts paid by X to convert three retail stores into one larger store must be capitalized because they resulted in a permanent structural alteration, and thus a new or different use, to the building. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 7. Not a new or different use. X owns a building for rental purposes and decides to sell it. In preparation of selling, X paints the interior walls, cleans the gutters, repairs cracks in the porch, and refinishes the hardwood floors. For purposes of this *Example 7*, assume the building and its structural components are the unit of property. Amounts paid for work done in anticipation of selling the building are not required to be capitalized unless the amounts paid materially increase the value as defined in paragraph (e)(3) of this section or prolong the economic useful life as defined in paragraph (f)(3). The amounts paid by X are not transaction costs paid to facilitate the sale of property under § 1.263(a)–1(c), nor do they materially increase the value of the building. Although the amounts were paid for the purpose of selling the building, the sale does not constitute a new or different use. Therefore, X is not required to capitalize as an improvement under paragraph (e) of this section the amounts paid for work performed on the building. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid.

Example 8. Not a material increase in value. (i) X is a commercial airline engaged in the business of transporting passengers and freight throughout the United States and abroad. To conduct its business, X owns or leases various types of aircraft.

As a condition of maintaining its airworthiness certification for these aircraft, X is required by the Federal Aviation Administration (FAA) to establish and adhere to a continuous maintenance program for each aircraft within its fleet. These programs, which are designed by X and the aircraft's manufacturer and approved by the FAA are incorporated into each aircraft's maintenance manual. The maintenance manuals require a variety of periodic maintenance visits at various intervals during the operating lives of each aircraft. One type

of maintenance visit is an engine shop visit (ESV), which is performed on X's aircraft engines approximately every 4 years.

(ii) In 2004, X purchased a new aircraft and engine. In 2008, X performs its first ESV on the aircraft engine. The ESV includes some or all of the following activities: disassembly, cleaning, inspection, repair, replacement, reassembly, and testing. During the ESV, the engine is removed from the aircraft and shipped to an outside vendor who performs the ESV. When the engine arrives at the vendor, the engine is cleaned and externally inspected. Regardless of condition, it is thoroughly inspected visually and, as appropriate, further inspected using a number of non-destructive testing procedures. The engine is then disassembled into major parts and, if necessary, into smaller parts. If inspection or testing discloses a discrepancy in a part's conformity to the specifications in X's maintenance program, the part is repaired, or if necessary, replaced with a new or used serviceable part conforming to the specifications. If a part can be repaired, but not in time to be returned to the engine with which the part had arrived, the vendor first attempts to replace the part with a similar part from customer stock (used parts from X's aircraft that were replaced or exchanged and repaired during an earlier ESV and then stored for future use on X's aircraft). If a part is not available from customer stock, the part is exchanged with a used, serviceable part in the vendor's inventory. A part is replaced (generally with a used serviceable part) only if the part removed from X's engine cannot be repaired timely.

(iii) For purposes of this *Example 8*, assume the aircraft engine is the appropriate unit of property. To determine whether the ESV results in a material increase in value under paragraph (e)(1)(iv) or (e)(1)(v) of this section, the comparison rule in paragraph (e)(3) of this section applies. Because the event necessitating the ESV was normal wear and tear, and X had not previously performed an ESV on the engine, the relevant comparison is the condition of the property immediately after the ESV with the condition of the property when placed in service by X. Using this comparison, the ESV did not result in a material addition, betterment, or material increase in capacity, productivity, efficiency, or quality of output of the engine compared to the condition of the engine when placed in service, nor did it adapt the engine to a new or different use. Therefore, the amounts paid by X for the ESV did not result in a material increase in value to the engine. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid for the ESV.

Example 9. Betterment; regulatory requirement. X owned a hotel in City that included five foot high unreinforced terra cotta and concrete parapets with overhanging cornices around the entire roof perimeter. The parapets and cornices were in good condition. In 2008, City passed an ordinance setting higher safety standards for parapets and cornices because of the hazardous conditions caused by earthquakes. To comply with the ordinance, X replaced the old parapets and cornices with new ones made of glass fiber reinforced concrete, which made them lighter and stronger than the original ones. They were attached to the hotel using welded connections instead of wire supports, making them more resistant to damage from lateral movement. For purposes of this *Example 9*, assume the hotel building and its structural components are the appropriate unit of property. The event necessitating the expenditure was the 2008 City ordinance. Prior to the ordinance, the old parapets and cornices were in good condition, but were determined by City to create a potential hazard. After the expenditure, the new parapets and cornices significantly improved the structural soundness of the hotel. Therefore, the amounts paid by X to replace the parapets and cornices must be capitalized because they resulted in a betterment to the hotel. City's requirement that X correct the potential hazard to continue operating the hotel is not relevant in determining whether the amount paid improved the hotel. See paragraph (d)(3) of this section.

Example 10. Not a material increase in value; regulatory requirement. X owned a meat processing plant. In 2008, X discovered that oil was seeping through the concrete walls of the plant, creating a fire hazard. Federal meat inspectors advised X that it must correct the seepage problem or shut down its plant. To correct the problem, X incurred costs to add a concrete lining to the walls from the floor to a height of about four feet and also to add concrete to the floor of the plant. For purposes of this *Example 10*, assume the plant building and its structural components are the appropriate unit of property. The event necessitating the expenditure was the seepage of the oil. Prior to the seepage, the plant did not leak and was functioning for its intended use. The expenditure did not result in a material addition, betterment, or material increase in capacity, productivity, efficiency, or quality of output of the plant compared to the condition of the plant prior to the seepage of the oil, nor did it adapt the plant to a new or different use. Therefore, the amounts paid by X to correct the seepage do not materially increase the value of the plant. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid to correct the seepage problem. The Federal meat inspectors' requirement that X correct the seepage to continue operating the plant is not relevant in determining whether the amount paid improved the plant. See paragraph (d)(3) of this section.

Example 11. Not a material increase in value; replacement with same part. X owns a small retail shop. In 2008, a storm damaged the roof of X's shop by displacing numerous wooden shingles. X decides to replace all the wooden shingles on the roof and hired a contractor to replace all the shingles on the roof with new wooden shingles. No part of the sheathing, rafters, or joists was replaced. For purposes of this *Example 11*, assume the shop and its structural components are the appropriate unit of property. The event necessitating the expenditure was the storm. Prior to the storm, the retail shop was functioning for its intended use. The expenditure did not result in a material addition, betterment, or material increase in capacity, productivity, efficiency, or quality of output of the shop compared to the condition of the shop prior to the storm, nor did it adapt the shop to a new or different use. Therefore, the amounts paid by X to reshingle the roof with wooden shingles do not materially increase the value of the shop. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid to replace the shingles.

Example 12. Not a material increase in value; replacement with comparable part. Assume the same facts as in *Example 11*, except that wooden shingles are not available on the market. X decides to replace all the wooden shingles with comparable asphalt shingles. The amounts paid by X to reshingle the roof with asphalt shingles do not materially increase the value of the shop, even though the asphalt shingles may be an improvement over the wooden shingles. Because the wooden shingles could not practicably be replaced with new wooden shingles, the replacement of the old shingles with comparable asphalt shingles does not, by itself, result in an improvement to the shop. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid to replace the shingles.

Example 13. Betterment; replacement with improved parts. Assume the same facts as in *Example 11*, except that, instead of replacing the wooden shingles with asphalt shingles, X decides to replace all the wooden shingles with shingles made of lightweight composite materials that are maintenance-free and do not absorb moisture. The new shingles have a 50-year warranty and a Class A fire rating. X must capitalize as an improvement amounts paid to reshingle the roof because they result in a betterment to the shop.

Example 14. Material increase in capacity. X owns a factory building with a storage area on the second floor. In 2008, X replaces the columns and girders supporting the second floor to permit storage of supplies with a gross weight 50 percent greater than the previous load-carrying capacity of the storage area. For purposes of this *Example 14*, assume the factory building and its structural components are the appropriate unit of property. X must capitalize as an improvement amounts paid for the columns and girders because they result in a material increase in the load-carrying capacity of the building. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

Example 15. Material increase in capacity. In 2008, X purchased harbor facilities consisting of a slip for the loading and unloading of barges and a channel leading from the slip to the river. At the time of purchase, the channel was 150 feet wide, 1,000 feet long, and 10 feet deep. To allow for ingress and egress and for the unloading of its barges, X needed to deepen the channel to a depth of 20 feet. X hired a contractor to dredge the channel to the required depth. For purposes of this *Example 15*, assume the channel is the appropriate unit of property. X must capitalize as an improvement amounts paid for the dredging because it resulted in a material increase in the capacity

of the channel. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

Example 16. Not a material increase in capacity. Assume the same facts as in *Example 15,* except that the channel was susceptible to siltation and, by 2009, the channel depth had been reduced to 18 feet. X hired a contractor to redredge the channel to a depth of 20 feet. The event necessitating the expenditure was the siltation of the channel. Both prior to the siltation and after the redredging, the depth of the channel was 20 feet. Therefore, the amounts paid by X for redredging the channel did not materially increase the capacity of the unit of property. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid to redredge.

Example 17. Not a material increase in capacity. X owns a building used in its trade or business. The first floor has a drop-ceiling. X decides to remove the drop-ceiling and repaint the original ceiling. For purposes of this *Example 17,* assume the building and its structural components are the appropriate unit of property. The removal of the drop-ceiling does not create additional capacity in the building that was not there prior to the removal. Therefore, the amounts paid by X to remove the drop-ceiling and repaint the original ceiling did not materially increase the capacity of the unit of property. X is not required to capitalize as an improvement under paragraph (e) of this section amounts paid related to removing the drop-ceiling. The comparison rule in paragraph (e)(3) of this section does not apply to these amounts paid because the expenditure was not necessitated by a particular event.

(f) *Restoration*—(1) *In general.* A taxpayer must capitalize amounts paid that restore a unit of property. Amounts paid restore property if the amounts paid substantially (as defined in paragraph (f)(3) of this section) prolong the economic useful life of the unit of property.

(2) *Economic useful life*—(i) *Taxpayers with an applicable financial statement.* For taxpayers with an applicable financial statement (as defined in paragraph (f)(2)(iii) of this section), the economic useful life of a unit of property generally is presumed to be the same as the useful life used by the taxpayer for purposes of determining (at the time the property is originally acquired or produced by the taxpayer) depreciation in its applicable financial statement, regardless of any salvage value of the property. A taxpayer may rebut this presumption only if there is a clear and convincing basis that the economic useful life (as defined in paragraph (f)(2)(ii) of this section for taxpayers without an applicable financial statement) of the unit of property is significantly different than the useful life used by the taxpayer for purposes of determining depreciation in its applicable financial statement. If a taxpayer does not have an applicable financial statement at the time the property was originally acquired or produced, but does have an applicable financial statement at some later date, the economic useful life of the unit of property must be determined under paragraph (f)(2)(ii) of this section. Further, if a taxpayer treats amounts paid for a unit of property as an expense in its applicable financial statement on a basis other than the property having a useful life of one year or less, the economic useful life of the unit of property must be determined under paragraph (f)(2)(ii) of this section. For example, if a taxpayer has a policy of treating as an expense on its applicable financial statement amounts paid for property costing less than a certain dollar amount, notwithstanding that the property has a useful life of more than one year, the economic useful life of the property must be determined under paragraph (f)(2)(ii) of this section.

(ii) *Taxpayers without an applicable financial statement.* For taxpayers that do not have an applicable financial statement (as defined in paragraph (f)(2)(iii) of this section), the economic useful life of a unit of property is not necessarily the useful life inherent in the property but is the period over which the property may reasonably be expected to be useful to the taxpayer or, if the taxpayer is engaged in a trade or business or an activity for the production of income, the period over which the property may reasonably be expected to be useful to the taxpayer in its trade or business or for the production of income, as applicable. This period is determined by reference to the taxpayer's experience with similar property, taking into account present conditions and probable future developments. Factors to be considered in determining this period include, but are not limited to—

(A) Wear and tear and decay or decline from natural causes;

(B) The normal progress of the art, economic changes, inventions, and current developments within the industry and the taxpayer's trade or business;

(C) The climatic and other local conditions peculiar to the taxpayer's trade or business; and

(D) The taxpayer's policy as to repairs, renewals, and replacements.

(iii) *Definition of ''applicable financial statement''.* The taxpayer's applicable financial statement is the taxpayer's financial statement listed in paragraphs (f)(2)(ii)(A) through (C) of this section that has the highest priority (including within paragraph (f)(2)(ii)(B) of this section). The financial statements are, in descending priority—

(A) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10–K or the Annual Statement to Shareholders);

(B) A certified audited financial statement that is accompanied by the report of an independent CPA (or in the case of a foreign entity, by the report of a similarly qualified independent professional), that is used for—

(*1*) Credit purposes,

(*2*) Reporting to shareholders, partners, or similar persons; or

(*3*) Any other substantial non-tax purpose; or

(C) A financial statement (other than a tax return) required to be provided to the Federal or a state government or any Federal or state agencies (other than the SEC or the Internal Revenue Service).

(3) *Substantially prolonging economic useful life*—(i) *In general.* An amount paid substantially prolongs the economic useful life of the unit of property if it extends the period over which the property may reasonably be expected to be useful to the taxpayer in its trade or business or for the production of income, as applicable (or, if the taxpayer is not engaged in a trade or business or an activity for the production of income, the period over which the property may reasonably be expected to be useful to the taxpayer) beyond the end of the taxable year immediately succeeding the taxable year in which the economic useful life of the unit of property was originally expected to cease, or if the property's economic useful life was previously prolonged (as determined under this paragraph (e)(3)(i)), the end of the taxable year immediately succeeding the taxable year in which the prolonged economic useful life was expected to cease.

(ii) *Replacements.* Amounts paid will be deemed to substantially prolong the economic useful life of the unit of property if a major component or a substantial structural part of the unit of property is replaced with either a new part or a part that has been restored to like-new condition as described in paragraph (f)(3)(iii) of this section. Thus, the replacement of a part with another part that is not new or is not in like-new condition (for example, a used or reconditioned part) does not constitute the replacement of a major component or substantial structural part of the unit of property under this paragraph (f)(3)(ii). Further, replacement of a relatively minor portion of the physical structure of the unit of property or a relatively minor portion of any of its

major parts, even if those parts are new, does not constitute the replacement of a major component or substantial structural part of the unit of property.

(iii) *Restoration to like-new condition.* Amounts paid will be deemed to substantially prolong the economic useful life of the unit of property if they result in the unit of property or a major component or substantial structural part of the unit of property being restored to a like-new condition (including bringing the unit of property or a major component or substantial structural part of the property to the status of new, rebuilt, remanufactured, or similar status under the terms of any Federal regulatory guideline or the manufacturer's original specifications).

(iv) *Restoration after a casualty loss.* Amounts paid will be deemed to substantially prolong the useful life of the unit of property if the taxpayer properly deducts a casualty loss under section 165 with respect to the unit of property and the amounts paid restore the unit of property to a condition that is the same or better than before the casualty.

(4) *Examples.* The following examples illustrate the rules of this paragraph (f) and, except as otherwise provided, assume that the amounts paid would not be required to be capitalized under any other provision of this section (paragraph (e), for example):

Example 1. Prolonged economic useful life. X is a Class I railroad that owns a fleet of locomotives. In 1989, X purchased a new locomotive with an economic useful life (as defined in paragraph (f)(2) of this section) of 22 years (from 1989–2011). X performs substantially the same cyclical maintenance on its locomotives approximately every 6 years. X performed cyclical maintenance on the locomotive in 1995, in 2001, and in 2007. Assume that the locomotive (which includes the engine) is the appropriate unit of property and that none of the cyclical maintenance projects resulted in a restoration under paragraph (f)(3)(ii) or (f)(3)(iii) of this section. Amounts paid for cyclical maintenance in 1995 and 2001 do not substantially prolong the economic useful life of the locomotive. However, the cyclical maintenance performed in 2007 will prolong the economic useful life of the locomotive to 2013, which is beyond the end of the next succeeding taxable year after the economic useful life of the locomotive ceases (2011). Therefore, under paragraphs (f)(1) and (f)(3)(i) of this section, X must capitalize as an improvement to the locomotive amounts paid for the cyclical maintenance performed in 2007, regardless of whether X was required to capitalize the amounts paid in previous years for cyclical maintenance.

Example 2. Economic useful life not prolonged. Assume the same facts as in *Example 1*, except that in 2009, X replaces a filter in the locomotive engine. X generally replaces this type of filter every 4 years. Although the filter itself would last beyond the end of the locomotive's economic useful life in 2011, the amount paid for the filter does not substantially prolong the economic useful life of the locomotive because the filter will not extend beyond 2009 the period over which the locomotive may reasonably be expected to be useful to X in its trade or business. Additionally, although the filter is a necessary component of the locomotive, the filter is not a substantial structural part or major component of the locomotive. Therefore, the amount paid to replace the filter does not substantially prolong the economic useful life of the locomotive.

Example 3. Minor part replacement. X owns a small retail shop. In 2008, a storm damaged the roof of X's shop by displacing numerous wooden shingles. X decides to replace all the wooden shingles on the roof and hires a contractor to replace all the shingles on the roof with new wooden shingles. No part of the sheathing, rafters, or joists was replaced. For purposes of this *Example 3*, assume the shop and its structural components are the appropriate unit of property. The replacement of the shingles did not extend the useful life of the shop under paragraph (f)(3)(i) of this section. The portion of the roof replaced is not a substantial structural part of the shop, nor does the replacement of the shingles restore to a like-new condition a major component or substantial structural part of the shop. Therefore, the amounts paid by X to reshingle the roof with wooden shingles do not substantially prolong the economic useful life of the shop.

Example 4. Major component or substantial structural part. Assume the same facts as in Example 3, except that when the contractor began work on the shingles, the contractor discovered that a major portion of the sheathing had rotted, and the rafters were weakened as well. The contractor replaced all the sheathing and a significant portion of the rafters. The roof (including the shingles, sheathing, rafters, and joists) is a substantial structural part of a building. The replacement of the shingles, sheathing, and rafters restored to a like-new condition a substantial structural part of the shop. Therefore, under paragraphs (f)(1) and (f)(3)(iii) of this section, X must capitalize as an improvement to the shop amounts paid to replace the roof of the shop.

Example 5. Not a major component or structural part. X uses a car in providing a taxi service. X purchased the car in 2008. Assume that the unit of property is the car. The car has an economic useful life of 5 years. In 2011, the battery dies and X takes the car to a repair shop, which replaces the battery. Although the battery itself may last beyond the end of the car's economic useful life, the amount paid for the battery does not substantially prolong the economic useful life of the car because the battery will not extend beyond 2013 the period over which the car may reasonably be expected to be useful to X in its trade or business. Although the battery is a necessary component of the car, the battery is not a substantial structural part or major component of the car. Therefore, the amount paid to replace the battery does not substantially prolong the economic useful life of the car.

Example 6. Major component or structural part. Assume the same facts as *Example 5*, except rather than the battery dying, the car overheats and causes so much damage that the engine has to be rebuilt. The engine is a major component of the car. Therefore, X is required to capitalize as an improvement to the car under paragraphs (f)(1) and (f)(3)(iii) of this section the amounts paid to rebuild the engine.

Example 7. Repair performed during an improvement; coordination with section 263A. Assume the same facts as *Example 6*, except that X has a broken taillight fixed at the same time that the engine was rebuilt. The repair to the taillight was not incurred because the engine was rebuilt, nor did it benefit the rebuild of the engine. The repair of the broken taillight is a deductible expense under § 1.162–4. Under section 263A, all indirect costs, including otherwise deductible repair and maintenance costs that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. Therefore, all amounts paid that are incurred by reason of the engine being rebuilt must be capitalized, including, for example, amounts paid for activities that would usually be deductible maintenance expenses, such as refilling the engine with oil and radiator fluid. Amounts paid to repair the broken taillight, however, are not incurred by reason of the engine being rebuilt, nor do the amounts paid directly benefit the engine rebuild, despite being repaired at the same time. Thus, X is not required to capitalize to the improvement of the car (the rebuild of the engine) the amounts paid to repair the broken taillight.

Example 8. Related amounts to replace major component or structural part. (i) X owns a retail gasoline station, consisting of a paved area used for automobile access to the pumps and parking areas, a building used to market gasoline, and a canopy covering the gasoline pumps. The premises also consists of underground storage tanks (USTs) that are connected by piping to the pumps and are part of the machinery used in the immediate retail sale of gas. The pumps also are connected to a monitoring unit in the building that allows the sales clerk to monitor the gasoline sales. To comply with regulations issued by the Environmental Protection Agency, X is required to remove and replace leaking USTs. In 2008, X hires a contractor to perform the removal and replacement, which consists of removing the old tanks and installing new tanks with leak detection systems. The removal of the old tanks includes removing the paving material covering the tanks, excavating a hole large enough to gain access to the old tanks, disconnecting any strapping and pipe connections to the old tanks, and lifting the old tanks out of the hole. Installation of the new tanks includes placement of a liner in the excavated hole, placement of the new tanks, installation of a leak detection system, installation of an overfill system, connection of the tank to the pipes leading to the pumps, backfilling of the hole, and replacement of the paving. X is also required to pay a permit fee to the county to undertake the installation of the new tanks.

(ii) X pays the permit fee to the county on October 15, 2008. The contractor performs all

of the required work and, on November 1, 2008, bills X for the costs of removing the old USTs. On November 15, 2008, the contractor bills X for the remainder of the work. Assume the fuel distribution system is the appropriate unit of property. The USTs are major components of the fuel distribution system. Therefore, under paragraphs (f)(1) and (f)(3)(ii) of this section, X must capitalize as an improvement to the fuel distribution system the aggregate of related amounts paid to replace the USTs, which related amounts include the amount paid to the county, the amount paid to remove the old USTs, and the amount paid to install the new USTs (regardless that the amounts were separately invoiced and paid to two different parties).

Example 9. Major component or substantial structural part. X is a common carrier that owns a fleet of petroleum hauling trucks. In 2008, X replaces the existing engine, cab, and petroleum tank of a truck with a new engine, cab, and tank. Assume the tractor of the truck (which includes the cab and the engine) is a separate unit of property from the rest of the truck. Also assume that the trailer (which contains the petroleum tank) is a separate unit of property from the truck. The engine and the cab are major components of the truck tractor, and the petroleum tank is a major component of the trailer. Therefore, under paragraphs (f)(1) and (f)(3)(ii) of this section, X must capitalize as an improvement to the tractor amounts paid to replace the engine and cab, and must capitalize as an improvement to the trailer amounts paid to replace the petroleum tank.

Example 10. Restoration of major component to like-new condition. (i) X is a towboat operator that owns and leases a fleet of towboats. In 2008, X replaces an existing towboat engine with a rebuilt engine. A towboat engine is rebuilt through a series of steps designed to put the engine in like-new operating condition to the maximum extent possible. Engines in a towboat nearing the end of its useful life or engines that have been removed from towboats due to a catastrophic malfunction are likely candidates for the rebuilding process. The goal of the rebuilding process is to bring each of an engine's component parts to the manufacturer's original dimensional specifications for new parts.

(ii) Replacement of the existing towboat engine with a rebuilt engine involves dry-docking the towboat. The rebuilding and replacement process takes approximately 3 to 5 months. The process requires the removal of the engine from the towboat and the removal of all of the moving and nonmoving components from the engine as well. The engine's crankcase and oil pan are separated, and every part of the engine is cleaned, inspected using intense illumination, machined, and treated with special materials to restore the engine to like-new operating condition. The engine crankcase and oil pan are extensively machined and welded, and numerous dimensional tests and checks are performed to ensure that the engine is returned to a like-new condition through the rebuilding process. In addition, a reconditioned crankshaft and camshaft normally are installed in the engine during the rebuilding process. The power packs are completely rebuilt with a large number of new parts during the rebuilding process. The oil pumps, water pumps, engine turbochargers, and governors are normally removed and exchanged for rebuilt parts during the rebuilding process. The accessory drive gears, all of the piping on the front and aft ends of the engine, the governor drive gear, and the turbocharger drive gears are removed and normally exchanged for rebuilt parts during the rebuilding process. The goal of the rebuilding process is to bring each of an engine's component parts to the engine manufacturer's original dimensional specifications for new parts. Assume the towboat (which includes the engine) is the appropriate unit of property. The work done on the towboat engine constitutes a remanufacture or rebuild of the engine, which is a major component of the towboat. Therefore, under paragraphs (f)(1) and (f)(3)(iii) of this section, X must capitalize as an improvement to the towboat amounts paid to rebuild the towboat engine.

Example 11. Repairs performed during an improvement; coordination with section 263A. Assume the same facts as in *Example 10*, except that while the towboat is in dry-dock to have the engine rebuilt, X also makes repairs to the hull and rudders that are not by themselves an improvement under this section. The amounts paid to repair the hull and rudders do not directly benefit nor are incurred by reason of the engine rebuild. Under section 263A, all indirect costs, including otherwise deductible repair costs that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. Therefore, all amounts paid that are incurred by reason of the engine being rebuilt must be capitalized to the improvement, including, for example, amounts paid for activities such as cleaning and inspecting the engine, which usually would be deductible maintenance costs. Amounts paid to repair the hull and rudders, however, are not incurred by reason of the engine being rebuilt, nor do the amounts paid directly benefit the engine rebuild, despite being incurred at the same time. Thus, in accordance with paragraph (d)(5)(i) of this section, X is not required to capitalize to the towboat amounts paid to repair the hull and rudders to the improvement.

Example 12. Restoration to like-new condition; coordination with section 263A. Assume the same facts as *Example 10*, except that while the towboat is in dry-dock, X also makes substantial improvements to the propulsion systems and the mechanical systems, including rebuilding large sections of the hull, and rebuilding, replacing, or upgrading the steering systems, shafting systems, and electrical systems, such that almost the entire towboat is restored to like-new condition. This process constitutes a remanufacture or rebuild of the towboat. Under section 263A, all indirect costs, including otherwise deductible repair costs that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. Therefore, under paragraph (d)(5)(i) of this section, X must capitalize to the improvement of the towboat (the rebuild) amounts paid that otherwise would be deductible repair costs that directly benefit or are incurred by reason of the improvement.

Example 13. Restoration to like-new condition. X is a Class I railroad that owns a fleet of freight cars. Approximately every 10 years, X rebuilds its freight cars. The rebuild includes a complete disassembly, inspection, and reconditioning and/or replacement of components of the suspension and draft systems, trailer hitches, and other special equipment. Modifications are made to the car to upgrade various components to the latest engineering standards. The freight car essentially is stripped to the frame, with all of its substantial components either reconditioned or replaced. The frame itself is the longest-lasting part of the car and is reconditioned. The walls of the freight-train car are replaced or are sandblasted and repainted. New wheels typically are installed on the car. All the remaining components of the car are restored before they are reassembled. At the end of the rebuild, the freight cars have been restored to like-new condition. Assume the freight car is the appropriate unit of property. The work done to the freight car constitutes a remanufacture or rebuild of the freight car. Therefore, under paragraphs (f)(1) and (f)(3)(iii) of this section, X must capitalize as an improvement to the freight car amounts paid to rebuild the freight car.

Example 14. Restoration of major component to like-new condition. X owned a factory that it acquired in 1997. In 2008, the factory roof began to leak. These leaks on occasion resulted in damage to X's products and prevented the use of certain portions of the factory. X decided to reroof the entire factory and hired a contractor to perform the reroofing. The structure of the roof, including substantial portions of the rafters and joists, was restored to a like-new condition. Assume the factory building and its structural components are the appropriate unit of property. The roofing process constitutes a remanufacture or rebuild of the roof, which is a substantial structural part of the factory. Therefore, under paragraphs (f)(1) and (f)(3)(iii) of this section, X must capitalize as an improvement to the factory amounts paid to reroof the factory.

Example 15. Minor part replacement; coordination with section 263A. X is in the business of smelting aluminum. X's aluminum smelting facility includes a plant where molten aluminum is poured into molds and allowed to solidify. Because of the potential of fire from a molten metal explosion, the plant's roof must be made of fire-resistant material. The roof must also be without leaks because rain water hitting the molten aluminum could cause an explosion. The roof of the plant was made of roofing material and corrugated sheet metal decking, which supports the roofing material. During 2008, X removed and replaced a minor portion of the plant's roof decking and roofing material. At the time of the replacement, the pattern of the original metal support decking was not available. Therefore, X used comparable fire resistant wood decking to replace the corrugated metal decking. For purposes of this *Example 15*, assume the plant building and its structural components are the appropriate unit of

property and that the amount paid does not prolong the economic useful life of the plant under paragraph (f)(3)(i) of this section. The portion of the roof structure being replaced is not a substantial structural part of the plant, nor does the work performed return to like-new condition a major component or substantial structural part of the plant. Further, because X could not practicably replace the roof material with the same type of material, the replacement of the original roof material with an improved, but comparable, material does not, by itself, result in an improvement. Therefore, the amount paid to remove and replace a minor part of the plant's roof decking and roofing materially does not substantially prolong the economic useful life of the plant. However, under section 263A, all indirect costs, including otherwise deductible costs, that directly benefit or are incurred by reason of the taxpayer's manufacturing activities must be capitalized to the property produced for sale. Therefore, because the amounts paid for the roof decking and materials are incurred by reason of X's manufacturing operations, the amounts paid must be capitalized under section 263A to the property produced for sale by X.

Example 16. Minor part replacement. (i) X is a commercial airline engaged in the business of transporting passengers and freight throughout the United States and abroad. To conduct its business, X owns or leases various types of aircraft. As a condition of maintaining its airworthiness certification for these aircraft, X is required by the Federal Aviation Administration (FAA) to establish and adhere to a continuous maintenance program for each aircraft within its fleet. These programs, which are designed by X and the aircraft's manufacturer and approved by the FAA are incorporated into each aircraft's maintenance manual. The maintenance manuals require a variety of periodic maintenance visits at various intervals during the operating lives of each aircraft. One type of maintenance visit is an engine shop visit (ESV), which is performed on X's aircraft engines approximately every 4 years.

(ii) In 2004, X purchased a new aircraft and engine. In 2008, X performs its first ESV on the aircraft engine. The ESV includes some or all of the following activities: Disassembly, cleaning, inspection, repair, replacement, reassembly, and testing. During the ESV, the engine is removed from the aircraft and shipped to an outside vendor who performs the ESV. When the engine arrives at the vendor, the engine is cleaned and externally inspected. Regardless of condition, it is thoroughly inspected visually and, as appropriate, further inspected using a number of non-destructive testing procedures. The engine is then disassembled into major parts and, if necessary, into smaller parts. If inspection or testing discloses a discrepancy in a part's conformity to the specifications in X's maintenance program, the part is repaired, or if necessary, replaced with a new or used serviceable part conforming to the specifications. If a part can be repaired, but not in time to be returned to the engine with which the part had arrived, the vendor first attempts to replace the part with a similar part from customer stock (used parts from X's aircraft that were replaced or exchanged and repaired during an earlier ESV and then stored for future use on X's aircraft). If a part is not available from customer stock, the part is exchanged with a used, serviceable part in the vendor's inventory. A part is replaced (generally with a used serviceable part) only if the part removed from X's engine cannot be repaired timely. Although many minor parts may be replaced during the ESV, the ESV does not return the engine to a like-new condition.

(iii) For purposes of this *Example 16*, assume the aircraft engine is the appropriate unit of property. The ESV does not result in the replacement of the engine nor does it restore the engine to a like-new condition. Therefore, the amount paid for the ESV does not substantially prolong the economic useful life of the engine.

Example 17. Repairs performed during an improvement; coordination with section 263A. (i) Assume the same facts as in *Example 16*, except that X purchased the aircraft in 1986 and, in addition to the continuous maintenance program for engines, X adheres to a continuous maintenance program for its aircraft airframes. One type of maintenance visit is a heavy maintenance visit (HMV), which is performed on X's aircraft airframes approximately every 8 years. In 2008, X decided to make substantial modifications to the airframe, which resulted in the restoration of the airframe to like-new condition. The modifications included removing all the belly skin panels on the aircraft's fuselage and replacing them with new skin panels; replacing the metal supports under the lavatories and galleys; removing the wiring in the leading edges of both wings and replacing it with new wiring; removing the fuel tank bladders, harnesses, wiring systems, and connectors and replacing them with new components; opening every lap joint on the airframe and replacing the epoxy and rivets used to seal the lap joints with a non-corrosive sealant and larger rivets; reconfiguring and upgrading the avionics and the equipment in the cockpit; replacing all the seats, overhead bins, sidewall panels, partitions, carpeting, windows, galleys, lavatories, and ceiling panels with new items; installing a cabin smoke and fire detection system, and a ground proximity warning system; and painting the exterior of the aircraft. In addition, X performed much of the same work that would be performed during an HMV.

(ii) For purposes of this *Example 17*, assume the aircraft airframe is the appropriate unit of property. The amounts paid to modify the airframe are required to be capitalized as an improvement to the airframe under paragraph (f) of this section because the modifications restored the airframe to a like-new condition. Assume the amounts paid for the HMV are not required to be capitalized as a separate improvement to the airframe. Under section 263A, all indirect costs, including otherwise deductible repair costs that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. Therefore, X must capitalize to the improvement of the airframe (the restoration) amounts paid that usually would be ordinary and necessary repair costs, including any amounts paid for the HMV that directly benefit or are incurred by reason of the improvement to the airframe. X is not required, however, to capitalize to the improvement of the airframe any amounts paid for the HMV that do not directly benefit or are not incurred by reason of the improvement to the airframe.

Example 18. Restoration of major component to like-new condition; coordination with section 263A. (i) X is a Class I railroad that owns a fleet of locomotives. In 1994, X purchased a new locomotive (Locomotive A) with an economic useful life (as defined in paragraph (f)(2) of this section) of 20 years (from 1994–2014). X performed cyclical maintenance on Locomotive A in 2000, and again in 2008. In 2000, X replaced the power cylinders on Locomotive A's engine, and performed work on other components of Locomotive A. In 2008, X removed the engine and replaced it with one it had previously remanufactured to the manufacturer's original specifications, and again performed work on other components of Locomotive A. The engine that X removed from Locomotive A in 2008 was remanufactured to the manufacturer's original specifications and installed on Locomotive B later in 2008.

(ii) Assume the locomotive (which includes the engine) is the appropriate unit of property. The replacement of the power cylinders and the other work performed on Locomotive A in 2000 did not prolong the economic useful life of Locomotive A under paragraph (f)(3) of this section. However, the amounts paid in 2008 to remove the engine and replace it with a previously manufactured engine must be capitalized under paragraph (f)(3)(ii) of this section. Assume the amounts paid in 2008 to perform work on other components of Locomotive A are not required to be capitalized as a separate improvement to Locomotive A. Under section 263A, all indirect costs, including otherwise deductible repair costs that directly benefit or are incurred by reason of the improvement must be capitalized as part of the improvement. Therefore, X must capitalize to the improvement of Locomotive A (the installation of the remanufactured engine) amounts paid that usually would be ordinary and necessary repair costs, including any amounts paid for work on other components that directly benefit or are incurred by reason of the improvement to Locomotive A. X is not required, however, to capitalize to the improvement of Locomotive A any amounts paid for work performed on other components that do not directly benefit or are not incurred by reason of the improvement to Locomotive A. Further, X must capitalize to the improvement of Locomotive B (the installation of remanufactured engine) the amounts paid to remanufacture the engine removed from Locomotive A and amounts paid to install the remanufactured engine on Locomotive B.

(g) *Repair allowance method*—(1) *In general.* This paragraph (g) provides an optional simplified method (the repair

allowance method) for determining whether amounts paid to repair, maintain, or improve certain tangible property are to be treated as deductible expenses or capital expenditures. A taxpayer that elects to use the repair allowance method described in paragraph (g)(3) of this section may use that method instead of determining whether amounts paid to repair, maintain, or improve property are capital expenditures or deductible expenses under the general principles of sections 162(a), 212, and 263(a). Thus, except for the rules in paragraph (d)(2) of this section for determining the appropriate unit of property, the capitalization rules in § 1.263(a)–3(d) do not apply to property for which the taxpayer uses the repair allowance method under this paragraph (g). See section 263A for the scope of costs required to be capitalized to property produced by the taxpayer or to property acquired for resale.

(2) *Election of repair allowance method.* In the case of repair allowance property (as defined in paragraph (g)(6) of this section), a taxpayer may elect to use the repair allowance method described in paragraph (g)(3) of this section. See paragraph (g)(9) of this section for the manner of electing the repair allowance. A taxpayer that elects to use the repair allowance method must use that method for all of its repair allowance property in all MACRS classes (including property classified into a MACRS class for purposes of the repair allowance method under paragraph (g)(6)(ii) of this section). A taxpayer electing the repair allowance method must use that method consistently for all future years unless the taxpayer revokes the election in accordance with paragraph (g)(10) of this section.

(3) *Application of repair allowance method.* Under the repair allowance method, a taxpayer must treat all amounts paid (other than amounts paid for excluded additions, as defined in paragraph (g)(7) of this section) for materials and labor to repair, maintain, or improve all the repair allowance property in a particular MACRS class as deductible expenses under section 162 for the taxable year, up to the repair allowance amount (as determined in paragraph (g)(4) of this section) for that MACRS class, and treat the excess of all amounts paid to repair, maintain, or improve all the repair allowance property in that MACRS class (the capitalized amount) in accordance with paragraph (g)(5) of this section.

(4) *Repair allowance amount*—(i) *In general.* Except as provided in paragraph (g)(4)(iv) of this section (with regard to buildings), under the repair allowance method for a particular taxable year, the repair allowance amount for a particular MACRS class consisting of repair allowance property is an amount equal to the average unadjusted basis (as defined in paragraph (g)(4)(ii) of this section) of repair allowance property in the MACRS class multiplied by the repair allowance percentage in effect for the MACRS class for the taxable year.

(ii) *Average unadjusted basis.* For purposes of this section, average unadjusted basis is the average of the unadjusted basis (as defined in paragraph (g)(4)(iii) of this section) of all repair allowance property in the MACRS class at the beginning of the taxable year and the unadjusted basis of all repair allowance property in the MACRS class at the end of the taxable year.

(iii) *Unadjusted basis.* For purposes of this section, unadjusted basis is the basis as determined under section 1012, or other applicable sections of subchapter O, and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). Unadjusted basis is determined without regard to any adjustments described in section 1016(a)(2) or (3) or to amounts for which the taxpayer has elected to treat as an expense (for example, under section 179, 179B, or 179C), but with regard to basis reductions which are required because of credits taken on the property (for example, under section 44, 45G, 45H, or 50(c)). Unadjusted basis also must reflect the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than for use in the taxpayer's trade or business (or for the production of income).

(iv) *Buildings.* In the case of buildings and structural components that are repair allowance property, the repair allowance method is applied separately with respect to each unit of property.

(5) *Capitalized amount*—(i) *In general.* Under the repair allowance method for a particular taxable year, the capitalized amount is the excess of all amounts paid to repair, maintain, or improve all the repair allowance property in a MACRS class over the repair allowance amount for that MACRS class. In addition, the capitalized amount includes all of the indirect costs of producing the repair allowance property in the MACRS class, which must be capitalized in accordance with the taxpayer's method of accounting for section 263A costs. Except as provided in paragraphs (g)(5)(iv), (g)(5)(v), and (g)(5)(vi) of this section, a taxpayer may choose to treat the capitalized amount as a single asset under paragraph (g)(5)(ii) of this section or, alternatively, may choose to allocate the capitalized amount to specific repair allowance property in the MACRS class in accordance with paragraph (g)(5)(iii) of this section.

(ii) *Single asset treatment of capitalized amount.* In general, the capitalized amount for a particular MACRS class may be treated by the taxpayer as a separate single asset and depreciated in accordance with that MACRS class. The single asset is treated as a section 168(i)(6) improvement and is treated as placed in service by the taxpayer on the last day of the first half of the taxable year in which the amount is paid, before application of the convention under section 168(d). Except for a sale of assets constituting a trade or business, no gain or loss is recognized on capitalized amounts treated as a single asset under this paragraph (g)(5)(ii) upon disposition of any repair allowance property to which the capitalized amounts are related. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of property. Taxpayers must continue to depreciate the single asset over the remainder of the MACRS applicable recovery period.

(iii) *Allocation treatment of capitalized amount.* Instead of treating the capitalized amount as a single asset under paragraph (g)(5)(ii) of this section, a taxpayer may allocate the capitalized amount for a particular MACRS class to all repair allowance property in the particular MACRS class in proportion to the unadjusted basis of the property in that MACRS class as of the beginning of the taxable year. The capitalized amount allocated to repair allowance property is treated as a section 168(i)(6) improvement to the underlying repair allowance property and is treated as placed in service by the taxpayer on the last day of the first half of the taxable year in which the amount is paid, before application of the convention under section 168(d).

(iv) *Section 168(g) repair allowance property.* If any repair allowance property in a particular MACRS class as of the beginning of the taxable year is depreciated under section 168(g) pursuant to section 168(g)(1)(A) through (D) or other provisions of the Internal Revenue Code, the portion of the capitalized amount for that MACRS class that is attributable to all section 168(g) repair allowance property in that MACRS class (section 168(g) total capitalized amount) is determined by multiplying the capitalized amount for

that MACRS class (as determined under paragraph (g)(5)(i) of this section) by a percentage that is equal to the unadjusted basis of all section 168(g) repair allowance property in that MACRS class as of the beginning of the taxable year divided by the unadjusted basis of all repair allowance property in that MACRS class as of the beginning of the taxable year. The section 168(g) total capitalized amount for a particular MACRS class then is allocated to each section 168(g) repair allowance property in that MACRS class by multiplying the section 168(g) total capitalized amount for that MACRS class by a percentage that is equal to the unadjusted basis of the particular section 168(g) repair allowance property in that MACRS class as of the beginning of the taxable year divided by the unadjusted basis of all section 168(g) repair allowance property in that MACRS class as of the beginning of the taxable year. The capitalized amount allocated to each section 168(g) repair allowance property is depreciated in accordance with section 168(g), is treated as a section 168(i)(6) improvement to the underlying repair allowance property, and is treated as placed in service by the taxpayer on the last day of the first half of the taxable year in which the amount is paid, before application of the convention under section 168(d).

(v) *Section 168(g) election.* If a taxpayer makes an election under section 168(g)(7) for a particular MACRS class with respect to property placed in service in the current taxable year, the election applies to the capitalized amount for that MACRS class. If such an election is made, the taxpayer must allocate the capitalized amount for that MACRS class to all repair allowance property in the MACRS class in proportion to the unadjusted basis of the property in that MACRS class as of the beginning of the taxable year. The capitalized amount is treated as a section 168(i)(6) improvement to the underlying repair allowance property and is treated as placed in service by the taxpayer on the last day of the first half of the taxable year in which the amount is paid, before application of the convention under section 168(d). The depreciation of the capitalized amount allocated to repair allowance property must be determined under section 168(g) whether or not the repair allowance property in the MACRS class as of the beginning of the taxable year is depreciated under section 168(g).

(vi) *Public utility property.* If any repair allowance property in a particular MACRS class is public utility property (as defined in section 168(i)(10) or former section 167(l)(3)(A)), the portion of the capitalized amount for that MACRS class that is attributable to all public utility property in that MACRS class (public utility property total capitalized amount) is determined by multiplying the capitalized amount for that MACRS class (as determined under paragraph (g)(5)(i) of this section) by a percentage that is equal to the unadjusted basis of all public utility property in that MACRS class as of the beginning of the taxable year divided by the unadjusted basis of all repair allowance property in that MACRS class as of the beginning of the taxable year. The public utility property total capitalized amount for a particular MACRS class then is subtracted from the unadjusted basis of all repair allowance property in that MACRS class as of beginning of the taxable year to determine the non-public utility property total capitalized amount. A taxpayer may choose to treat the public utility property total capitalized amount for a particular MACRS class as a single asset in accordance with paragraph (g)(5)(ii) of this section, and the non-public utility property total capitalized amount for that MACRS class as another single asset in accordance with paragraph (g)(5)(ii) of this section. Alternatively, the taxpayer may choose to allocate the public utility property total capitalized amount for a particular MACRS class in proportion to the unadjusted basis of the public utility property in that MACRS class as of the beginning of the taxable year in accordance with paragraph (g)(5)(iii) of this section, and allocate the non-public utility property total capitalized amount for a particular MACRS class in proportion to the unadjusted basis of the non-public utility property in that MACRS class as of the beginning of the taxable year in accordance with paragraph (g)(5)(iii) of this section. In either case, the public utility property total capitalized amount for a particular MACRS class is subject to the normalization requirements of section 168(i)(9).

(6) *Repair allowance property*—(i) *In general.* Except as provided in paragraph (g)(6)(iii) of this section, repair allowance property means real or personal property subject to section 168 of the Internal Revenue Code of 1986, or treated as subject to section 168 under paragraph (g)(6)(ii) of this section, that is used in the taxpayer's trade or business or for the production of income.

(ii) *Certain property not subject to section 168.* Repair allowance property includes tangible depreciable property not otherwise in a MACRS class if the taxpayer classifies the property, only for purposes of the repair allowance method in paragraph (g)(4) of this section, to determine the appropriate MACRS class and either the taxpayer placed the property in service before the effective date of section 168 of the Internal Revenue Code of 1986 or the taxpayer properly elected out of section 168 with regard to the property.

(iii) *Exclusions from repair allowance property.* Repair allowance property does not include any property for which the taxpayer has elected to use the asset guideline class repair allowance in § 1.167(a)–11(d)(2); the method of accounting provided in section 263(d) (with regard to certain railroad rolling stock); the method of accounting provided in Rev. Proc. 2001–46 (2001–2 C.B. 263) or Rev. Proc. 2002–65 (2002–2 C.B. 700) (with regard to railroad track) (see § 601.601(d)(2) of this chapter); or any other property or method of accounting that is designated in guidance published in the **Federal Register** or the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(7) *Excluded additions*—(i) *In general. Excluded addition* means any amount paid—

(A) For the acquisition or production of a specific unit of property;

(B) For work that ameliorates a condition or defect that either existed prior to the taxpayer's acquisition of the unit of property or arose during the production of the unit of property, whether or not the taxpayer was aware of the condition or defect at the time of acquisition or production;

(C) For work performed prior to the date the unit of property is placed in service by the taxpayer (without regard to any applicable convention under section 168(d));

(D) That adapts the unit of property to a new or different use; or

(E) That increases the cubic or square space of a building.

(ii) *Treatment of excluded additions.* Any amount paid for an excluded addition is treated as a capital expenditure under sections 263(a) and 263A.

(8) *Repair allowance percentage.* Except as provided in any future guidance published in the **Federal Register** or the Internal Revenue Bulletin, the repair allowance percentage in effect for each MACRS class for a particular taxable year is as follows:

MACRS class	MACRS recovery period (years)	Repair allowance percentage
3-year property	3	16.5
5-year property	5	10
7-year property	7	7.14
10-year property	10	5
15-year property	15	3.33
20-year property	20	2.5
Water utility property	25	2
Residential rental property	27.5	1.82
Nonresidental rental property	39	1.28
Railroad grading or tunnel bore	50	1

(9) *Manner of election.* [Reserved]

(10) *Manner of revoking election.* A taxpayer may revoke an election made under the repair allowance method only by obtaining the Commissioner's consent to revoke the election. An election must be revoked prospectively and may not be revoked through the filing of an amended Federal income tax return. A taxpayer that revokes an election may not re-elect the repair allowance method for a period of at least five taxable years, beginning with the year of the revocation unless, based on a showing of unusual and compelling circumstances, consent is specifically granted by the Commissioner to re-elect the repair allowance at an earlier time.

(11) *Examples.* The following examples illustrate the rules of this paragraph (g) and assume that none of the rules in paragraph (g)(5)(iv) or (g)(5)(v) of this section applies:

Example 1. X elects the repair allowance method described in this paragraph (g). X's total unadjusted basis of all of its MACRS 10-year property as of January 1, 2008 is $10 million. X's total unadjusted basis of all MACRS 10-year property as of December 31, 2008 is $15 million (computed without regard to amounts capitalized under this repair allowance provision). During 2008, X pays $1,000,000 to repair, maintain, or improve MACRS 10-year property. Assume that none of X's property is an excluded addition as defined in paragraph (g)(7) of this section. The repair allowance percentage for MACRS 10-year property is 5 percent. X's repair allowance amount and capitalized amount are computed as follows:

(i) X determines its average unadjusted basis of MACRS 10-year property: ($10,000,000 + $15,000,000)/2 = $12,500,000.

(ii) X multiplies its average unadjusted basis of MACRS 10-year property by the prescribed repair allowance percentage for MACRS 10-year property to arrive at the repair allowance amount: $12,500,000 × 5% = $625,000.

(iii) Because X's amounts paid to repair, maintain, or improve MACRS 10-year property ($1,000,000) exceed the repair allowance amount for MACRS 10-year property ($625,000), X deducts under section 162(a) amounts paid to the extent of the repair allowance amount ($625,000) and capitalizes the amounts paid in excess of the repair allowance amount ($1,000,000 − $625,000 = $375,000).

(iv) The capitalized amount ($375,000) is treated as an improvement under section 168(i)(6). The improvement is depreciated as 10-year property under section 168 and is considered placed in service on the last day of the first half of 2008.

Example 2. X elects the repair allowance method described in this paragraph (g). X uses a car in providing a taxi service. X's unadjusted basis in the car is $25,000. Assume that the unit of property (as determined under paragraph (d)(2) of this section) is the car. In 2008, X incurs various costs to maintain, repair, and improve the car, including: $4,500 for gasoline; $550 for car washes and detailing, $2,200 for scheduled maintenance such as oil changes, tire rotation, new brakes, minor parts, and fluid replacements, etc.; $80 for new headlights; $250 for new tires; and $4,800 to rebuild the engine after the car overheated. Assume that none of X's expenditures are an excluded addition as defined in paragraph (g)(7) of this section. The car is classified as MACRS 5-year property. Assume that X has no other MACRS 5-year property. The repair allowance percentage for MACRS 5-year property is 10 percent. X's repair allowance amount and capitalized amount are computed as follows:

(i) X determines its average unadjusted basis of MACRS 5-year property is $25,000.

(ii) X multiplies its average unadjusted basis of MACRS 5-year property by the prescribed repair allowance percentage for MACRS 5-year property to arrive at the repair allowance amount: $25,000 × 10% = $2,500.

(iii) Because X's amounts to repair, maintain, or improve MACRS 5-year property ($2,200 + $80 + $250 + $4,800 = $7,330) exceed the repair allowance amount for MACRS 5-year property ($2,500), X treats $2,500 as an otherwise deductible ordinary and necessary expenditure under section 162(a) and capitalizes $4,830 as the amounts paid in excess of the repair allowance amount.

(iv) The capitalized amount ($4,830) is treated as an improvement under section 168(i)(6). The improvement is depreciated as 5-year property under section 168 and is considered placed in service on the last day of the first half of 2008.

(h) *Treatment of capital expenditures.* Amounts required to be capitalized under this section are capital expenditures and must be taken into account through a charge to capital account or basis, or in the case of property that is inventory in the hands of a taxpayer, through inclusion in inventory costs. See section 263A for the treatment of amounts referred to in this section as well as other amounts paid in connection with the production of real property and personal property, including films, sound recordings, video tapes, books, or similar properties.

(i) *Recovery of capitalized amounts.* Amounts that are capitalized under this section are recovered through depreciation, cost of goods sold, or by an adjustment to basis at the time the property is placed in service, sold, used, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Internal Revenue Code and regulation provisions relating to the use, sale, or disposition of property.

(j) *Effective date.* The rules in this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(k) *Accounting method changes.* [Reserved]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 224

Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 224

RIN 1076–AE80

Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs, proposes to amend its regulations by adding a new part to provide for Tribal Energy Resource Agreements (TERAs) between the Secretary of the Interior (Secretary) and Indian tribes under Section 2604 of the Indian Energy Resource Development and Self-Determination Act. The proposed regulations provide the process under which the Secretary will grant authority to an Indian tribe to review and approve leases business agreements and rights-of-way for specific energy development activities on tribal lands through an approved TERA. The Department invites your comments on the proposed rule.

DATES: Submit comments by September 20, 2006. We may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1076–AE80 as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail IEED at IEED@bia.edu and use the RIN 1076–AE80 in the subject line.
- Fax: 202–208–4564. Identify with the RIN 1076–AE80.
- Mail or hand-carry comments to the Department of the Interior, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference RIN 1076–AE80 in your comments and also include your name and return address.
- Comments on information collection are separate from comments on the rule and must be addressed separately. Send comments on the information collection in this rule (1076–AE80) to: Desk Officer for the Department of the Interior, Office of Management and Budget, by facsimile at (202) 395–6566 or e-mail: *oira_docket@omb.eop.gov*. Please also send a copy of your comments on the information collection to Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference RIN 1076–AE80.

FOR FURTHER INFORMATION CONTACT: Darryl Francois, Program Analyst, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, Telephone (202) 219–0740 or fax (202) 208–4564.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is issuing this part under authority of the Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. 109–58, 119 Stat. 763, 25 U.S.C. 3501–3504, and 25 U.S.C. 2 and 9.

Title V, Section 503 of the Energy Policy Act of 2005 (Pub. L. 109–58) amends Title XXVI (Indian Energy) of the Energy Policy Act of 1992 to require the Secretary of the Interior (Secretary) to promulgate regulations that implement new provisions concerning energy resource development on tribal lands. Specifically, the Indian Energy Development and Self-Determination Act, Title XXVI, Section 2604 of the Energy Policy Act, as amended, authorizes the Secretary to enter into TERAs with Indian tribes. The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an entirely new alternative for entering into energy-related business agreements and leases and for granting rights-of-way for pipelines, electric transmission and distribution lines without the Secretary's review and approval.

The proposed regulations provide that entering into a TERA requires a tribal application and Secretarial determination of a tribe's capacity to manage the full scope of administrative, regulatory, and energy resource development a tribe proposes to assume under an approved TERA. In addition, the Act requires that a TERA include provisions that cover environmental compliance measures and a process for review of any potential environmental impacts to areas affected by activities that the tribe could approve under the TERA. The TERA regulations must also provide a process for interested parties to challenge a tribe's non-compliance with terms of an approved TERA and for the Secretary to take necessary actions to protect trust resources if activities undertaken under an approved TERA cause or will cause imminent jeopardy to a trust resource.

The Act became law on August 8, 2005 and requires the Secretary to establish and implement regulations governing the TERA approval process within 365 days of its passage. In addition, the implementation of these regulations will further the Federal Government's policy of providing enhanced self-determination and economic development opportunities for American Indian tribes and support the national energy policy of increasing utilization of domestic energy resources.

Under the Act, the Department held a series of public meetings and tribal consultations in January 2006 to solicit stakeholder and tribal comment on the implementation of the Act. In addition, the Department in two letters to tribal leaders solicited direct involvement of tribes in drafting a framework for development of these proposed regulations.

Written and oral comments in public meetings with stakeholders identified several concerns that the Department considered in drafting the proposed regulations. Three issues raised the most concern: tribal capacity determination by the Department, TERA-authorized activity on fee land held by tribes; and environmental review of proposed and ongoing activities authorized by a TERA.

The Act requires that the implementing regulations include criteria the Secretary will use to determine the capacity of a tribe. These include the tribe's experience managing natural resources and administrative and financial resources that will be available to it when implementing an approved TERA; a process and requirements under which a tribe may voluntarily rescind a TERA and return to the Secretary the review and approval authority for future leases, business agreements and rights-of-way for energy resource development; a scope of and provisions for periodic review and evaluation of a TERA, including provision for review of transactions, reports and site inspections and any other review processes the Secretary deems appropriate; and provisions for final agency actions after exhaustion of administrative appeals of Secretarial decisions.

In drafting the proposed regulations the Department has diligently attempted to conform to the provisions of the Act to include provisions for the items the Act states must be included in the

regulations and to address concerns that arose during the consultation process.

With respect to a capacity determination, the proposed regulations include a provision for tribes considering entering into a TERA agreement to go through a pre-application process designed to provide a preliminary analysis of the type of expertise necessary to manage particular types of energy resource development projects. In addition, tribes as part of the TERA application process must outline the level of expertise they possess to manage the energy resource development projects within the scope of the proposed TERA or how they would acquire the needed expertise. The Department welcomes comment on whether these provisions are sufficient to allow the Secretary to determine tribal capacity to develop energy resources.

The proposed regulations adopt the definition of tribal lands contained in the Act. However, some tribes suggest that a more expansive definition that includes real property held in fee by a tribe regardless of location would potentially create more economically robust development projects. The Department welcomes comment on whether to include this definition of Tribal land in the proposed regulations. The suggested language for a definition of tribal land is as follows:

Tribal land means those lands for which the Secretary has determined that interests in real property held in fee by a tribe and located outside of Indian Country, as defined in 18 U.S.C 1151, are not subject to a restriction on alienation, unless otherwise specifically imposed by Congress. Should a final, non-appealable decision of a court of competent jurisdiction invalidate the Secretary's determination that such land is not subject to a restriction on alienation and conclude such land is subject to a restriction on alienation, this definition of Tribal land will include real property held in fee by a tribe, regardless of location, except in those instances in which Congress has removed the restriction on alienation.

The proposed regulations also include provisions that require tribes seeking approval for a TERA to demonstrate their capacity to identify and evaluate all significant environmental effects and reasonable mitigation measures, including those related to cultural resources. The Department welcomes comment on whether these provisions are sufficient to allow the Secretary to determine tribal capacity to develop energy resources.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and does not require review by the Office of Management and Budget under Executive Order 12866. These regulations create a process that will allow tribes to enter into an agreement with the Department intended to promote tribal oversight and management of energy and mineral resource development on tribal lands. The approval of a Tribal Energy Resource Agreement will, not, by itself, result in energy development related leases, business agreements, or rights-of-way. Therefore, this proposed rule will not have an effect of $100 million or more on the economy and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

By implementing the provisions of the Act, these regulations will further the goal of Indian self-determination that is a longstanding goal of the Federal Government and the Department and so will not create serious inconsistency or otherwise interfere with any action taken or planned by another agency or raise novel legal or policy issues. This proposed rule does not interact with entitlements, grants, user fees, or loan programs so it will not affect any such programs or the rights or obligations of their recipients.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA (5 U.S.C. 601 *et seq.*). Most of the costs for complying with this proposed rule would be information collection costs. The total estimated annual burden hours for responding to the information collection requirements in this proposed rule are 10,752. Respondents to the information collection required by these regulations would need to acquire the services of individuals in the project management and energy, environmental, financial and legal analyses fields as well as administrative service staff. The annual non-hour burden associated with the proposed regulations is $48,200 for office and maintenance expenses associated with preparation of reports and a variety of correspondence. When added to the salary and benefits for personnel, the annual industry-wide cost for the information collection burden in this proposed rule would be about $375,795. Therefore, complying with ''Part 224—Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act'' should not be a significant financial burden. For a proposed rule with these relatively low projected costs, a Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards will consider comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates each agency's responsiveness to small business. If you wish to comment, call toll-free 1–(888)–734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Most of the costs for complying with this proposed rule would be information collection costs. The total estimated industry-wide cost for the information collection burden in this proposed rule would be about $375,000. Therefore, the proposed rule will not have an annual effect on the economy of $100 million or more.

(b) The approval of a Tribal Energy Resource Agreement will not, by itself, result in energy development related leases, business agreements, or rights-of-way. Therefore, the proposed regulations will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic areas.

(c) Because the proposed regulations do not directly result in energy resource development projects, they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

Participation in the development of Tribal Energy Resource Agreements as outlined in these proposed regulations is voluntary. In addition, there are regulatory alternatives for tribes that want to develop energy resources on tribal lands, but they may not want to develop a TERA. Furthermore, the proposed regulations will not result in the expenditure by the state, local or tribal governments or private sector of

$100 million or more in any one year. Therefore, these proposed regulations do not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than $100 million per year, and the proposed regulations do not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Federalism (Executive Order 13132)

According to Executive Order 13132, these proposed regulations do not have Federalism implications. While these regulations are of interest to tribes, there is no federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, the proposed regulations do not substantially and directly affect the relationship between the Federal and State governments, and would not impose costs on states or localities and so do not require a federalism assessment.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system, and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information that has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, the Department invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the information collection aspects of this proposed rule, you may send your comments directly to OMB (see the **ADDRESSES** section of this document). Please identify your comments with RIN 1076–AE80/Tribal Energy Resource Agreements, 25 CFR 224. Send a copy of your comments to the Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. Please reference ''Proposed Rule—Tribal Energy Resource Agreements'' in your comments. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau of Indian Affairs' Information Collection Clearance Officer at (703) 735–4414.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it early during the comment period. This does not affect the deadline for the public to comment to the Department of the Interior about the proposed regulations.

The title of the collection of information for the rule is ''Tribal Energy Resource Agreements, 25 CFR Part 224.'' Respondents to the information collections in these regulations derive economic benefit from an enhanced ability to manage energy resources that exist on tribal lands within their jurisdiction. Therefore, the frequency of response will vary and depends on the respondents needs. The information collection (IC) does not include questions of a sensitive nature. The IEED will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 522) and its implementing regulations (43 CFR part 2) or other applicable laws.

The following table details the IC burden for the proposed requirements in subparts B, C, D, E, F, G, and H:

TABLE 1.—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

Citation 25 CFR 224	Section title	Information collection requirement	Hour burden for respondent	Average number of annual responses	Annual burden hours for respondent	Total annual cost (salary & benefits)
Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements						
224.53 and 224.63.	What must an Application for an Agreement contain and What provisions must an Agreement contain?	224.53 Provisions (a) through (p) outline Application information requirements and 225.63 Provisions (a) through (c) outline Agreement requirements.	1080	4	4,320	$151,328 ($131,328)
224.57(d)	What must the Director do upon receipt of an Application?	Director issues written notice to tribe listing additional information requirements.	480	2	960	$33,468 ($29,468)
224.61	What will the tribe provide to the Director after receipt of the Director's report on the Application consultation meeting?	Tribe must submit final proposed Agreement.	32	4	128	$4,352 ($3,952)
224.64	How may a tribe assume management of development of different types of energy resources?	A tribe may assume management of other types of energy resources by applying for a new Agreement under the same requirements as §224.53 and §224.54 for that additional type of energy resource.	720	1	720	$24,888 ($21,888)

TABLE 1.—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT—Continued

Citation 25 CFR 224	Section title	Information collection requirement	Hour burden for respondent	Average number of annual responses	Annual burden hours for respondent	Total annual cost (salary & benefits)
224.65	How may a tribe assume additional activities under an Agreement?	Outlines an amendment process for making changes to an already approved Agreement.	520	1	520	$17,838 ($15,838)
224.68(d)	How will the Secretary use public comment?.	If the Secretary makes changes to final proposed Agreement based on public comment the tribe must approve final changes in writing.	480	4	1920	$66,936 ($58,936)
Subpart C—Approval of Tribal Energy Resource Agreements						
224.76	Upon notification of disapproval, may a tribe re-submit a revised final proposed Agreement?	Yes—Tribe may submit a revised final proposed Agreement.	520	1	520	$17,838 ($15,838)
Subpart D—Implementation of Tribal Energy Resource Agreements						
224.83	What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an Agreement?	Inform public, send copy of any agreements to the Director, and provide documentation to Director of information that would allow Secretary to discharge trust responsibilities.	32	10	320	$10,920 ($8,920)
224.87	What are the responsibilities of a tribe if it discovers a Violation or Breach?	Tribe must provide written notice to Director for provisions (a) through (c).	120	1	120	$4,291 ($3,791)
Subpart E—Interested Party Petitions						
224.108	What must a petition contain?	Provisions (a) through (j) outline petition information requirements.	464	1	464	$16,024 ($14,024)
224.112	What may the tribe do after it completes petition consultation with the Director?	After completion of petition consultation tribe may submit a written response.	408	1	408	$15,546 ($12,546)
224.120(a)	How must the Director proceed with a petition if it meets the threshold determinations?	The tribe must provide a written response to the Director's determination.	120	1	120	$4,291 ($3,791)
Subpart F—Periodic Reviews						
224.139(b)	What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset.	Submit a written response to the Director.	120	1	120	$4,291 ($3,791)
Subpart G—Reassumption						
224.156	What information must the tribe's response to the notice of intent to reassume include?	Information requirements for tribes response to notice of intent to reassume.	80	1	80	$2,696 ($2,496)
Subpart H—Rescission						
224.173	How does a tribe rescind an Agreement?	Tribe must submit a written tribal resolution to initiate a rescission.	32	1	32	$1,088 ($988)
Total Burden.	.....	.....	.....	.....	10,752	$375,795 ($327,595)

IEED specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for IEED to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

National Environmental Policy Act (NEPA)

Under NEPA and 516 Departmental Manual 6, Appendix 10.4C, ''Issuance and/or modification of regulations.'' these proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment. The proposed regulations fall within the categorical exclusion of Appendix 10.4C(1) because the impact of the proposed rule would be limited to administrative and economic effects. There are no extraordinary circumstances that would require preparation of an environmental assessment or an environmental impact statement.

Data Quality Act

In developing these regulations, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Energy Supply, Distribution, or Use (Executive Order 13211)

This proposed rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 13211. The proposed regulations are administrative in nature and will not directly lead to energy development projects. Therefore, they will not have a significant effect on energy supply, or distribution. Thus, a Statement of Energy Effects is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, the Department has determined that because the proposed rulemaking will uniquely affect tribal governments it will follow Department and Administrative protocols in consulting with tribal governments on the rulemaking. Consequently, tribal governments will be notified through this **Federal Register** notice and through the BIA field offices, of the ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in the development of the final rule. This will reinforce good intergovernmental relations with tribal governments and better inform, educate and advise such tribal governments on compliance requirements of the rule making. We consulted with tribal representatives during the formulation of this proposed regulation.

The Department sent letters to tribal leaders on October 31, 2005 with information about the TERA provisions of Title V, Section 503 and soliciting participation in a process to develop a framework for the implementing regulations. On December 9, 2005, the Department published a **Federal Register** notice (70 FR 73257) announcing public meetings and tribal consultations in 10 cities between January 9 and 20, 2006. The **Federal Register** notice also solicited written comments and was distributed through the BIA regional offices to all tribes. We held the meetings in the following cities: Tulsa, OK; Denver, CO; Houston, TX; Albuquerque, NM; Las Vegas, NV; Sacramento, CA; Minneapolis, MN; Billings, MT; Portland, OR; and Washington, DC. The comments received from these public meetings and consultations and the written comments submitted were taken into consideration in the formulation of the following proposed regulations. We have committed to consulting with tribal representatives in the formulation of a final rule for Tribal Energy Resource Agreements regulations.

Public Comment Procedures

The Department's practice is to make comments, including the names and addresses of respondents, available for public review. Individual respondents may request that we withhold their addresses from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, the Department will not consider anonymous comments. We will make all submissions from tribes, organizations, or businesses, and from individuals identifying themselves as representatives or officials of tribes, organizations, or businesses, available for public inspection in their entirety.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to the following questions:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION**; section of this preamble helpful in understanding the rule?

(5) What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 25 CFR Part 224

Agreement, Appeals, Application, Business agreements, Energy development, Interested party, Lease, Recordkeeping requirements, Reporting requirements, Right-of-Way, Tribal Energy Resource Agreements, Tribal capacity, Tribal lands, Trust, Trust asset.

Dated: August 1, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

For the reasons stated in the preamble, the Department proposes to add a new Part 224 in Chapter I of Title 25 of the Code of Federal Regulations as follows:

PART 224—TRIBAL ENERGY RESOURCE AGREEMENTS UNDER THE INDIAN TRIBAL ENERGY DEVELOPMENT AND SELF DETERMINATION ACT

Subpart A—General Provisions

Sec.

224.10 What is the purpose of this part?
224.20 How will the Secretary interpret and implement this part and the Act?
224.30 What definitions apply to this part?
224.40 How does the Act or an agreement affect the Secretary's trust responsibility?
224.41 When does the Secretary require agreement of more than one tribe to approve a TERA?

224.42 How does the Paperwork Reduction Act affect these regulations?

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

224.50 What is the purpose of this subpart?

Pre-Application Consultation and the Form of Application

224.51 What is a pre-application consultation between a tribe and the Director?
224.52 What may a tribe and the Secretary include in an agreement?
224.53 What must an application for an agreement contain?

Processing Applications

224.54 How must a tribe submit an application?
224.55 Will information a tribe submits during the application process be subject to disclosure to third parties?
224.56 What is the effect of the Director's receipt of a tribe's complete application?
224.57 What must the Director do upon receipt of an application?

Application Consultation Meeting

224.58 What is an application consultation meeting?
224.59 How may the Director use the results of the application consultation meeting?
224.60 What will the Director provide to the tribe after the application consultation meeting?
224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?
224.62 May a final proposed agreement differ from the original proposed agreement?

Agreement Requirements

224.63 What provisions must an agreement contain?
224.64 How may a tribe assume management of development of different types of energy resources?
224.65 How may a tribe assume additional activities under an agreement?

Public Notification and Comment

224.67 What must the Secretary do upon the Director's receipt of a final proposed agreement?
224.68 How will the Secretary use public comments?

Subpart C—Approval of Tribal Energy Resource Agreements

224.70 Will the Secretary conduct a review of a final proposed agreement under the National Environmental Policy Act (NEPA)?
224.71 What standards will the Secretary use to decide to approve a final proposed agreement?
224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?
224.73 How will the scope of energy resource development proposed in a tribe's agreement affect the Secretary's determination of the tribe's capacity?
224.74 When must the Secretary approve or disapprove a final proposed agreement?
224.75 What must the Secretary do upon approval or disapproval of a final proposed agreement?
224.76 Upon notification of disapproval, may a tribe re-submit a revised final proposed agreement?
224.77 Who may appeal the Secretary's decision on a final proposed agreement or a revised final proposed agreement?

Subpart D—Implementation of Tribal Energy Resource Agreements

Applicable Authorities and Responsibilities

224.80 Under what authority will a tribe perform activities undertaken under an agreement?
224.81 What laws are applicable to activities under an agreement?
224.82 What services will the Department provide to a tribe after approval of an agreement?
224.83 What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an agreement?

Leases, Business Agreements, and Right-of-Way Under an Agreement

224.84 When may a tribe grant a right-of-way under an agreement?
224.85 When may a tribe enter into a lease or business agreement under an agreement?
224.86 Are there limits for terms of leases, business agreements, and rights-of-way entered into under an agreement?

Violation or Breach

224.87 What are the responsibilities of a tribe if it discovers a violation or breach?
224.88 What are the responsibilities of the Director after receiving notice of a violation or breach from the tribe?
224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way entered into under an agreement?

Subpart E—Interested Party Petitions

224.100 May a person or entity ask the Secretary to review a tribe's compliance with an agreement?
224.101 Who is an interested party?
224.102 Must a tribe establish a comment or hearing process under an agreement for addressing environmental concerns?
224.103 Must a tribe establish a process for public participation regarding an agreement or activities undertaken under an agreement?
224.104 Must a tribe enact tribal laws, regulations, or procedures permitting persons or entities to allege a tribe's noncompliance with an agreement?
224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that establish hearing or comment processes or that permit allegations of a tribe's noncompliance with its agreement?
§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action under an agreement, how must the tribe respond to a petitioner's challenge?
224.107 What must a petitioner claim or request in a petition filed with the Secretary?
224.108 What must a petition contain?
224.109 What must a petitioner do before filing a petition with the Secretary?
224.110 When may a petitioner file a petition with the Secretary?
224.111 What must the Director do upon receipt of a petition?
224.112 What may the tribe do after it completes petition consultation with the Director?
224.113 How may the tribe address a petition in its written response?
224.114 What will the Director do if the tribe offers a resolution of a petitioner's claim in which the petitioner concurs?
224.115 When must the Director make threshold determinations about a petition?
224.116 What must the Director consider in making threshold determinations about a petition?
224.117 When must the Director dismiss a petition after making the threshold determinations about a petition?
224.118 How must the Director proceed if the Director dismisses a petition based on consideration of threshold determinations?
224.119 How must the Director proceed if the Director does not dismiss the petition based on threshold determinations?
224.120 How must the Director proceed with a petition if it meets the threshold determinations?
224.121 What action must the Director take to bring a tribe into compliance with an agreement?
224.122 When must the Director act on a petition?
224.123 How may a tribe or a petitioner appeal the Director's disposition of a petition?

Subpart F—Periodic Reviews

224.130 What is the purpose of this subpart?
224.131 What is a periodic review and evaluation?
224.132 How does the Director conduct a periodic review and evaluation?
224.133 What must the Director do after a periodic review and evaluation?
224.134 How often must the Director conduct a periodic review and evaluation?
224.135 Under what circumstances may the Director conduct additional reviews and evaluations?

Noncompliance

224.136 How will the Director's written report address a tribe's noncompliance with Federal law or the terms of an agreement?
224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?
224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?

224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?
224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?
224.141 What must the Secretary do if the tribe responds to the Director's order?

Subpart G—Reassumption

224.150 What is the purpose of this subpart?
224.151 When may the Secretary reassume activities under an agreement?
224.152 Must the Secretary always reassume the activities under an agreement upon a finding of imminent jeopardy to a physical trust asset?

Notice of Intent To Reassume

224.153 Must the Secretary notify the tribe of an intent to reassume activities under an agreement?
224.154 What must a notice of intent to reassume include?
224.155 When must a tribe respond to a notice of intent to reassume?
224.156 What information must the tribe's response to the notice of intent to reassume include?
224.157 How must the Secretary proceed after receiving the tribe's response?
224.158 What must the Secretary include in a written notice of reassumption?
224.159 How will reassumption affect valid existing rights that vested or lawful actions taken by the tribe or the Secretary before the effective date of the reassumption?
224.160 How will reassumption affect an agreement?
224.161 How may reassumption affect the tribe's ability to modify an agreement, administer additional activities or to assume administration of activities that the Secretary previously reassumed?

Subpart H—Rescission

224.170 What is the purpose of this subpart?
224.171 Who may rescind an agreement?
224.172 May a tribe rescind its authority to approve or disapprove a specific future lease, business agreement, or right-of-way or the development of a specific energy resource or geographic area?
224.173 How does a tribe rescind an agreement?
224.174 When does a voluntary rescission become effective?
224.175 How will rescission affect rights that vested before the effective date of the rescission or lawful actions taken by the tribe or the Secretary before the effective date of the rescission?

Subpart I—General Appeal Procedures

224.180 What is the purpose of this subpart?
224.181 Who may appeal Department decisions or inaction under this part?
224.182 What is the Initial Appeal Process?
224.183 What other administrative appeals processes also apply?
224.184 How do other administrative appeals processes apply?
224.185 When are decisions under this part effective?

Authority: 25 U.S.C. 2 and 9; 25 U.S.C. 3501–3504; Pub. L. 109–58.

Subpart A—General Provisions

§ 224.10 What is the purpose of this part?

This part:

(a) Establishes procedures by which a tribe may enter into and manage leases, business agreements, and rights-of-way for purposes of energy resource development on tribal land; and

(b) Describes the process for obtaining, implementing, and enforcing an agreement that will allow a tribe to enter into individual leases, business agreements, and rights-of-way without obtaining Secretarial approval.

§ 224.20 How will the Secretary interpret and implement this part and the Act?

(a) The Secretary will interpret and implement this part and the Indian Tribal Energy Development and Self-Determination Act (the Act) in keeping with the self-determination and energy development provisions and policies in the Act.

(b) The Secretary will liberally construe this part and the Act for the benefit of tribes to implement the Federal policy of self-determination. The Secretary will construe any ambiguities in this part or the Act in favor of the tribe to implement Tribal Energy Resource Agreements as authorized by this part and the Act.

§ 224.30 What definitions apply to this part?

Act means the Indian Tribal Energy Development and Self-Determination Act of 2005, as promulgated in Title V of the Energy Policy Act of 2005, Pub. L. 109–58, 25 U.S.C. 3501–3504.

Agreement means a tribal energy resource agreement (TERA) provided for by the Act and this part.

Application means the application submitted for an agreement under subpart B.

Business agreement means:

(1) Any permit, contract, joint venture, option, or other agreement that furthers any activity related to locating, producing, transporting, or marketing energy resources on or across tribal land;

(2) Any amendment, supplement, or other modification to such an agreement; or

(3) Any other business agreement entered into or subject to administration under a TERA.

Days mean calendar days. In computing any period prescribed or allowed by the Act and this part:

(1) Do not include the day of the event from which the period begins to run;

(2) Include the last day of the period, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday; and

(3) When the period prescribed or allowed is less than 11 days, exclude intermediate Saturdays, Sundays, and Federal holidays from the computation.

Decision Deadline means the 120-day period within which the Director will make a decision about a petition submitted by an interested party under subpart E. The Director may extend this period for up to 120 days.

Department means the Department of the Interior.

Director means the Director of the Office of Indian Energy and Economic Development or the Secretary's designee authorized to act on behalf of the Secretary.

Energy Resources means both renewable and nonrenewable energy sources, including, but not limited to, natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources.

Imminent jeopardy to a physical trust asset means an immediate threat of devaluation, degradation, damage, or loss of a physical trust asset, as determined by the Secretary, caused by the noncompliance of a tribe with an agreement or applicable Federal law.

Interested party means a person or entity who has filed a petition with the Secretary under subpart E seeking review of a tribe's compliance with an agreement and who meets the criteria in § 224.51.

Lease means a written agreement, or modification to an agreement, between a tribe and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of tribal land or energy resources for purposes of energy resource development, including:

(1) Exploration, extraction, processing, refining, marketing or other activities that further the development of energy resources; and

(2) Construction or operation of facilities on tribal lands used to generate, transmit, or distribute electricity or to process, transport, or refine energy resources.

Petitioner means a person or entity who has filed a petition under subpart E with a tribe or the Secretary seeking review of a tribe's compliance under an agreement. A petitioner is not considered to be an interested party unless the petitioner meets the criteria in § 224.51.

Physical trust asset means a physical asset held in trust by the United States in trust for a tribe or individual Indian or by a tribe or individual Indian subject to a restriction against alienation under the laws of the United States. ''Physical trust asset'' does not include:

(1) Any improvements (for example, wells or structures) to the assets held in trust or restricted status; or

(2) Monetary assets.

Public means one or more natural or legal persons, and their associations, organizations, or groups; or Federal, State, tribal and local government agencies; or private industry and their associations, organizations, or groups.

Right-of-way means an easement, right, or other authorization over tribal lands, granted or subject to administration under an agreement, for a pipeline or electric transmission or distribution line that serves a facility located on tribal land that is related to energy resources or an agreement to grant a right-of-way.

Secretary means the Secretary of the Interior or the Secretary's designee.

Tribal Designated Official means the official designated in a tribe's pre-application consultation request, application, or agreement to assist in scheduling consultations or to receive communications from the Secretary or the Director to the tribe regarding the status of an agreement or activities under an agreement.

Tribal governing body means a tribe's governing entity, such as tribal council or tribal business committee, as established under tribal or Federal law and recognized by the Secretary.

Tribal land means any land or interests in land owned by a tribe, title to which is held in trust by the United States, or is subject to a restriction against alienation under the laws of the United States. For the purposes of this part, tribal land includes land taken into trust or subject to restrictions on alienation under the laws of the United States after the effective date of the agreement.

Tribe means any Indian tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, except a Native Corporation as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1602.

Violation or *breach* means any breach or violation of a lease, business agreement, or right-of-way or a Federal or tribal environmental law resulting from an activity undertaken under a lease, business agreement, or right-of-way under an agreement.

§ 224.40 How does the Act or an agreement affect the Secretary's trust responsibility?

(a) The Act (25 U.S.C. 3504(e)(6)) preserves the Secretary's trust responsibilities relating to trust resources and requires the Secretary to act in good faith and in the best interest of Indian tribes at all times.

(b) Neither the Act nor this part absolve the Secretary of responsibilities to Indian tribes under the trust relationship, treaties, statutes, regulations, Executive Orders, agreements or other Federal law.

(c) The Act and this part preserve the Secretary's trust responsibility to ensure that the rights and interests of an Indian tribe are protected if:

(1) Another party to a lease, business agreement, or right-of-way violates any term thereof; or any applicable Federal law; or

(2) Any provision of a lease, business agreement, or right-of-way violates an agreement under which it was executed.

(d) The United States is not liable for losses that may result to a tribe or to third parties from terms or provisions contained in a lease, business agreement, or right-of-way negotiated by an Indian tribe and executed under an agreement.

§ 224.41 When does the Secretary require agreement of more than one tribe to approve a TERA?

When a TERA includes leases, business agreements and rights-of-way on tribal land held for the benefit of more that one tribe, as part of the pre-application process each tribal governing body must submit a resolution or enactment approving the submission of an application. Each tribal governing body must also sign the agreement, if approved.

224.42 How does the Paperwork Reduction Act affect these regulations?

The information collected from the public is cleared and covered by OMB Control Number 1076–XXXX. The sections of this rule which have information collections are §§ 224.53, 224.57(d), 224.61, 224.63, 224.64, 224.65, 224.68(d), 224.76, 224.83, 224.87, 224.108, 224.112, 224.120(a), 224.139(b), 224.156, and 224.173. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Procedures for Obtaining Tribal Energy Resource Agreements

§ 224.50 What is the purpose of this subpart?

This subpart establishes procedures governing:

(a) The pre-application process;

(b) The required content of applications;

(c) Submitting applications; and

(d) Secretarial review and processing of applications.

Pre-application Consultation and the Form of Application

§ 224.51 What is a pre-application consultation between a tribe and the Director?

(a) A tribe interested in entering into an agreement should request a pre-application consultation by writing to the Director, Office of Indian Energy and Economic Development, Department of the Interior, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245. The request should include the name and contact information of the tribal Designated Official who will coordinate scheduling with the Director.

(b) Upon receiving a pre-application consultation request, the Director will contact the tribal Designated Official to set up a consultation meeting. The Director may also initiate pre-application discussions with tribal governing bodies.

(c) At the pre-application consultation meeting, the tribe and the Director may discuss any of the matters related to a future application including, but not limited to:

(1) The application process;

(2) The potential scope of the tribe's future application, including any regulatory or administrative activities that the tribe anticipates exercising;

(3) The required content of an application for an agreement;

(4) The tribe's capacity to manage and regulate energy resource development identified in the scope of its application;

(5) Potential opportunities for funding capacity-building and other activities of the tribe under an agreement; and

(6) Any other matters applicable to this part, the Act, and the tribe.

§ 224.52 What may a tribe and the Secretary include in an agreement?

An agreement under this part:

(a) May include development of all or part of a tribe's energy resources;

(b) Must be explicit as to the type of energy resource included;

(c) May include assumption by the tribe of certain activities normally carried out by the Secretary, except for inherently Federal functions; and

(d) Must be explicit as to what activities related to specific energy resource developments the tribe proposes to assume.

§ 224.53 What must an application for an agreement contain?

(a) An application for an agreement must contain all of the following:

(1) A proposed agreement between the tribe and the Secretary that contains the provisions required in § 224.63;

(2) A statement that the Secretary recognizes the tribe as an Indian tribe and that the tribe has tribal land;

(3) A brief description of the tribe's form of government;

(4) Copies of relevant portions of tribal documents (see paragraph (b) of this section);

(5) A map, legal description, and general description of the tribal land that the tribe intends to be covered by an agreement;

(6) A coverage statement meeting the requirements in paragraph (c) of this section;

(7) A statement describing the tribe's experience in negotiating and administering energy-related leases, business agreements, and rights-of-way issued under Federal laws other than the Act, including descriptions of significant leases, business agreements, and rights-of-way it has entered into with third parties or to which it has consented;

(8) A description of the expertise that the tribe will use to administer the agreement that meets the requirements of paragraph (d) of this section;

(9) A statement of the scope of administrative responsibility that the tribe intends to exercise that meets the requirements of paragraph (e) of this section;

(10) A statement that meets the requirements of paragraph (f) of this section describing the capability of the tribe assume any of the activities the tribe has identified in the application;

(11) A copy of the resolution or enactment of the tribal governing body or tribal governing bodies under § 224.41 approving the submission of an application for an agreement; and

(12) A designation of, and contact information for, the tribal Designated Official who will receive notifications from the Secretary or the Director regarding the status of the application.

(b) The documents required by paragraph (a)(4) of this section include documents such as a constitution, code, ordinance, or resolution, that designates the tribal governing body or officials within the tribe that have the authority to enter into leases, business agreements, or rights-of-way on behalf of the tribe.

(c) The coverage statement required by paragraph (a)(7) of this section must:

(1) If applicable, state that the tribe retains the option of entering into energy-related leases or agreements under laws other than the Act for any tribal land covered by the agreement; and

(2) State one of the following:

(i) The tribe intends the agreement to cover all tribal land, energy resources, and categories of energy-related leases, business agreements and rights-of-way; or

(ii) The tribe intends to exclude certain tribal land, energy resources, or categories of energy-related leases, business agreements, or rights-of-way from the agreement. In this case, the statement must include a description of the tribal land, energy resources, or energy-related leases, business agreements, or rights-of-way intended to be excluded from the agreement.

(d) The statement required by paragraph (a)(8) of this section must describe the expertise that the tribe will use in the three areas specified in paragraph (d)(1) of this section. It must address at a minimum the resources specified in paragraph (d)(2) of this section.

(1) The statement must describe the expertise that the tribe will use to:

(i) Negotiate or review leases, business agreements, or rights-of-way under the agreement;

(ii) Evaluate the environmental effects, including those related to cultural resources, of the agreement;

(iii) Review proposals or monitor compliance with financial terms and conditions of leases, business agreements, or rights-of-way under the agreement; and

(iv) Monitor the compliance of a third party with the terms of any arrangement covered by the agreement

(2) The statement must address the following areas of the tribe's expertise:

(i) Existing departments or administrative divisions within the tribe;

(ii) Proposed departments or administrative divisions within the tribe;

(iii) Existing internal and external expertise possessed by the tribe, including a description of applicable tribal employees and consultants or advisors; and

(iv) Proposed internal and external expertise that the tribe may acquire, including a description of anticipated tribal employees and consultants or advisors.

(e) The statement required by paragraph (a)(9) of this section must address the amount of administrative responsibility related to the permitting, approval, or monitoring of activities to be undertaken under a lease, business agreement, or right-of-way.

(1) If a tribe desires to exercise regulatory responsibilities, the tribe must indicate that intent and describe the tribe's plan for such administration and management.

(2) Examples of regulatory authority that a tribe may wish to exercise include, but are not limited to review and approval of applications for permits to drill; review of archaeological resources or historical or cultural resources; royalty accounting, collection, and auditing; production accounting; or other review and enforcement activities associated with compliance.

(3) The tribe's intended scope of administrative responsibilities may not include the responsibilities of the Federal Government under the Endangered Species Act or any other inherently Federal function.

(f) The statement required by paragraph (a)(10) of this section must:

(1) Describe the tribe's ability to negotiate and consummate leases, business agreements, and rights-of-way;

(2) Include a discussion of the estimated annual costs to the tribe to assume those responsibilities and the availability and source of revenue needed by the tribe to carry out those responsibilities; and

(3) If the intended source of tribal funds includes grants or contract awards from the Department, the Department of Energy, or other Federal agencies, describe the estimated annual amounts needed and the Federal program under which such funds are to be requested.

(4) Include a description of contracts entered into between the tribe and the Secretary under the Indian Self-Determination and Education Assistance Act, as amended; or environmental programs a tribe assumes under the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C.A. 7401); or cooperative agreements under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 *et seq.*).

Processing Applications

§ 224.54 How must a tribe submit an application?

A tribe must submit an application and all supporting documents in both written and electronic formats to the Director, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245.

§ 224.55 Will information a tribe submits during the application process be subject to disclosure to third parties?

(a) Information the tribe submits during the application process, including information provided during pre-application consultation, may be subject to disclosure to third parties under the Freedom of Information Act (5 U.S.C. 552);

(b) If information a tribe submits contains commercial or financial information that is confidential and proprietary, exceptions to disclosure under the Freedom of Information Act may apply to those portions of the information;

(c) During the application process, a tribe may identify information in the documents it submits that it considers commercial or financial and also confidential and proprietary;

(d) The terms of existing mineral agreements previously entered into under the Indian Mineral Development Act are statutorily protected under the Act against disclosure; and

(e) A tribe is under no Federal obligation to disclose to any person or party the fact that it has submitted an application to the Secretary.

§ 224.56 What is the effect of the Director's receipt of a tribe's complete application?

The Director's receipt of a tribe's complete application begins a 270-day period during which the Secretary must approve or disapprove a proposed agreement. With the consent of the tribe, the Secretary may extend the period for a decision.

§ 224.57 What must the Director do upon receipt of an application?

(a) Upon receipt of an application, the Director must:

(1) Promptly notify the tribal Designated Official in writing that the Director has received the application and the date of such receipt;

(2) Within 30 days from the date of receipt of the application, determine whether the application is complete;

(3) If the Director determines that the application is complete, issue a written notice together with a request for an application consultation meeting to the tribal Designated Official. As appropriate, the Director will also notify other Department bureaus and offices that the Director has received a complete application and provide copies; or

(4) Issue a written notice to the tribal Designated Official that the application is not complete and specify the additional information the tribe is required to submit to make the application complete. If the Director determines that an application is not complete, the 270-day review period does not begin until the Director receives a complete application.

(b) Unless, within the 30-day period, the Director notifies the tribal Designated Official that the application is not complete, the application is presumed complete and the 270-day review period under Section 2604(e)(2)(A) of the Act will begin as of the date that the application was received.

Application Consultation Meeting

§ 224.58 What is an application consultation meeting?

(a) An application consultation meeting is a meeting held at the tribe's headquarters between the Director and the tribal governing body and any other representatives that the tribe may designate to discuss the scope of the application. The Secretary will designate representatives of appropriate Department offices or bureaus to attend the application consultation meeting, as necessary. The meeting will:

(1) Be held at the earliest practicable time after the Director receives the application;

(2) Be a thorough review of the tribe's application;

(3) Identify specific services that the Department would provide, consistent with the Secretary's ongoing trust responsibilities, in the event that the agreement is approved;

(4) Include a discussion of the relationship of the tribe to other Federal agencies with responsibilities for implementing or ensuring compliance with the terms and conditions of leases, business agreements, or rights-of-way and applicable Federal laws;

(5) Include a discussion of the relationship of the tribe to its members, to State and local governments, and to non-Indians who may be affected by approval of an agreement or by leases, business agreements, or rights-of-way that may be granted or entered into by the tribe;

(6) Include a discussion of the tribal administrative structure and financial and management capacities needed to carry out the tribe's obligations under an agreement; and

(7) Include a discussion of the form of the agreement and the timing and relative responsibilities for its preparation.

(b) The tribe may record the meeting.

§ 224.59 How may the Director use the results of the application consultation meeting?

The Director may use the results of the application consultation meeting to assist the Secretary in evaluating the capacity of the tribe to:

(a) Analyze the business and legal terms and the potential effect of proposals for leases, business agreements, and rights-of-way;

(b) Monitor and enforce third party compliance with the terms of leases, business agreements, and rights-of-way; and

(c) Carry out the tribe's responsibilities under an agreement if the agreement is approved.

§ 224.60 What will the Director provide to the tribe after the application consultation meeting?

Within 30 days following the meeting with the tribe, the Director will provide to the tribal Designated Official a written report summarizing the content of the meeting. The report must include the Director's recommendations, if any, for revising the proposed agreement submitted with the tribe's application.

§ 224.61 What will the tribe provide to the Director after receipt of the Director's report on the application consultation meeting?

If the tribe wishes to proceed with the application process, the tribe must submit a final proposed agreement to the Director within 45 days following the issuance of the Director's report on the application consultation meeting.

§ 224.62 May a final proposed agreement differ from the original proposed agreement?

The final proposed agreement may or may not contain provisions that differ from the original proposed agreement submitted with the application.

(a) If a final proposed agreement does not differ significantly or materially from the original complete application, the running of the 270-day period commenced by either the receipt of the original complete application or by operation of § 224.16(d) is not changed.

(b) If a final proposed agreement differs significantly or materially from the original complete application, the Secretary may extend the 270-day period for a reasonable time. The Secretary will notify the tribe in writing if an extension of time is necessary.

Agreement Requirements

§ 224.63 What provisions must an agreement contain?

An agreement must contain the following:

(a) Provisions for periodic review and evaluation of the tribe's performance under the agreement and recognizing the authority of the Secretary, upon a finding of imminent jeopardy to a physical trust asset, to take actions the Secretary determines to be necessary to

protect the asset, including reassumption under subparts F and G.

(b) Provisions ensuring:

(1) Appropriate evaluation of all significant environmental effects (as compared to a no-action alternative), including effects on cultural resources, arising from leases, business agreements, or rights-of-way, and measures ensuring that appropriate mitigation measures will be identified and implemented in performance of activities under leases, business agreements, or rights-of-way;

(2) A process for informing the public and providing opportunity for public comment on the environmental impacts of the proposed action;

(3) A process for providing tribal responses to relevant and substantive public comments before tribal approval of the lease, business agreement or right-of-way;

(4) Sufficient tribal administrative support and technical capability to carry out the environmental review process; and

(5) The tribe's oversight of energy resource development activities any other party conducts to determine whether the activities comply with the agreement and applicable Federal environmental laws.

(c) Provisions that require, with respect to any lease, business agreement, or right-of-way approved under an agreement, the following:

(1) Mechanisms for obtaining corporate, technical, and financial qualifications of a third party that has applied to enter into a lease, business agreement, or right-of-way;

(2) Express limitations on duration that meet the restrictions of the Act;

(3) Mechanisms for amendment, transfer, and renewal;

(4) Mechanisms for obtaining, reporting and evaluating economic return to the tribe;

(5) Mechanisms for securing technical information about activities and ensuring that technical activities are performed in compliance with terms and conditions;

(6) Assurances of compliance with all applicable environmental laws;

(7) Requirements that the lessee, operator or right-of-way grantee will comply with all applicable environmental laws;

(8) Identification of tribal offices or entities with authority to approve a lease, business agreement, or right-of-way and the activities to be undertaken under a lease, business agreement, or right-of-way;

(9) Public notification that a lease, business agreement, or right-of-way has received final tribal approval;

(10) A process for consultation with affected States regarding off-reservation impacts, if any, identified under (b) of this section;

(11) A description of remedies for breach;

(12) A statement that any provision that violates an express term or requirement of the agreement is null and void;

(13) A statement that if the Secretary determines that any provision that violates an express term or requirement of the agreement is material, the Secretary may reassume or rescind the lease, business agreement, or right-of-way, or take any action the Secretary determines to be in the best interest of the tribe;

(14) A statement that the lease, business agreement, or right-of-way goes into effect when the tribe delivers executed copies to the Director by first class mail return receipt requested or express delivery;

(15) Citations to any applicable tribal laws, regulations, or procedures that permit persons or entities to submit comments on or participate in hearings regarding activities to be undertaken by a tribe under an agreement;

(16) Citations to any applicable tribal laws, regulations, or procedures establishing remedies that petitioning parties must exhaust before filing a petition with the Secretary under subpart E;

(17) Provisions that require a tribe to provide the Secretary with citations to any tribal laws, regulations, or procedures tribes adopt after the effective date of an agreement that establish, amend, or supplement tribal comment or hearing provisions or tribal remedies that petitioning parties must exhaust prior to filing a petition with the Secretary under subpart E;

(18) Provisions that designate a person or entity authorized by the tribe to maintain and to disseminate to requesting members of the public current copies of tribal laws, regulations, or procedures that establish or describe tribal comment or hearing processes that petitioning parties must participate in or tribal remedies that petitioning parties must exhaust before instituting appeals under subpart E, together with contact information;

(19) Identification of financial assistance, if any that the Secretary will provide to assist in implementation of the agreement, including the tribe's environmental review of individual energy development activities;

(20) Provisions that require a tribe to notify the Secretary and the Director in writing of violations or breaches; and

(21) Provisions that require the tribe and the tribe's financial experts to adhere to Government auditing standards and continuing professional education requirements when performing audits and periodic reviews of the audits.

§ 224.64 How may a tribe assume management of development of different types of energy resources?

In order for a tribe to assume responsibility for development of energy resources that are not included in the Agreement, a tribe must apply for a new agreement covering the responsibilities for the development of the other energy resources it wishes to assume. The Secretary's approval of a new agreement will include a determination of the tribe's capacity to develop that type of energy resource.

§ 224.65 How may a tribe assume additional activities under an agreement?

A tribe may assume additional activities related to the development of the same type of energy resource included in an agreement by negotiating an amendment to the existing agreement with the Secretary to include the additional activities.

Public Notification and Comment

§ 224.67 What must the Secretary do upon the Director's receipt of a final proposed agreement?

Within 10 days of the Director's receipt of a final proposed agreement, the Secretary must submit a notice for publication in the **Federal Register** advising the public that the Secretary is considering a final proposed agreement for approval or disapproval. The notice will:

(a) Contain information advising the public how to request and receive copies of the final proposed agreement from the Secretary;

(b) Contain information advising the public how to request and receive copies of or participate in any National Environmental Policy Act (NEPA) reviews, as prescribed in subpart C, related to approval of the final proposed agreement; and

(c) Invite written public comments, state the due date for comments, and state the address to which to send comments.

§ 224.68 How will the Secretary use public comments?

(a) The Secretary will review public comments and provide copies of the comments to the tribal Designated Official;

(b) The Secretary will consider public comments in deciding to approve or

disapprove the final proposed agreement;

(c) Upon mutual agreement between the tribe and the Secretary, the tribe may make changes in the final proposed agreement based on the comments received; and

(d) If the tribe revises the final proposed agreement based on public comments, the tribal governing body must approve the changes, the authorized representative of the tribe must sign the final proposed agreement as changed, and the tribe must send the revised final proposed agreement to the Director.

Subpart C—Approval of Tribal Energy Resource Agreements

§ 224.70 Will the Secretary conduct a review of a final proposed agreement under the National Environmental Policy Act (NEPA)?

Yes, the Secretary will conduct a review under NEPA of the potential impacts on the quality of the human environment that might arise from approving a final proposed agreement. The scope of the Secretary's evaluation will be limited to the scope of the activities and the energy resource developments the tribe is proposing to undertake as specified by the provisions of the agreement. The public comment period, if any, under the NEPA review will occur concurrently with the public comment period for an agreement under § 224.67.

§ 224.71 What standards will the Secretary use to decide to approve a final proposed agreement?

The Secretary will consider the best interests of the tribe and the Federal policy of promoting tribal self-determination in deciding to approve a final proposed agreement. The Secretary must approve a final proposed agreement if it contains the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to:

(a) Make prudent decisions in negotiating, approving or disapproving proposals for leases, business agreements, or rights-of-way affecting tribal land; and

(b) Monitor and regulate activities undertaken by third parties under approved leases, business agreement, or rights-of-way in accordance with the final proposed agreement.

§ 224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?

The Secretary will determine whether a tribe has demonstrated sufficient capacity under § 224.71 based on the information obtained through the application process. The Secretary will consider:

(a) The specific energy resource development the tribe proposes;

(b) The scope of the administrative or regulatory authority the tribe seeks to assume;

(c) Materials and information submitted with the application for an agreement, the results of meetings between the tribe and representatives of the Department, and the Director's written report;

(d) The history of the tribe's role in energy resource development, including pre-existing energy-related leases, business agreements, and rights-of-way;

(e) The administrative expertise of the tribe available to regulate energy resource development within the scope of the final proposed agreement or the tribe's plans for establishing that expertise;

(f) The financial capacity of the tribe to maintain or procure the technical expertise needed to evaluate proposals and to monitor anticipated activities in a prudent manner;

(g) The tribe's past performance administering contracts and grants associated with self-determination programs, cooperative agreements with Federal and State agencies, and environmental programs administered by the Environmental Protection Agency; and

(h) Any other factors the Secretary finds to be relevant in light of the scope of the proposed agreement.

§ 224.73 How will the scope of energy resource development proposed in a tribe's agreement affect the Secretary's determination of the tribe's capacity?

The Secretary's review under § 224.72 of the tribe's capacity to manage and regulate energy resource development under the agreement will include a determination as to each energy resource development subject to the agreement, and each activity the tribe proposes to assume. The Secretary's review of an agreement must be limited to activities specified by the provisions of the agreement.

§ 224.74 When must the Secretary approve or disapprove a final proposed agreement?

The Secretary must approve or disapprove a final proposed agreement or a revised final proposed agreement within 270 days of the Director's receipt of a complete application for an agreement. With the consent of the tribe, or as provided in § 224.16, the Secretary may extend the period for a decision.

§ 224.75 What must the Secretary do upon approval or disapproval of a final proposed agreement?

Within 10 days of the Secretary's approval or disapproval of a final proposed agreement, the Secretary must notify the tribal governing body in writing;

(a) If the Secretary's decision is to approve the final proposed agreement, the Secretary will sign the agreement, which will be effective on the date of the Secretary's signature, and return the signed agreement to the tribal governing body.

(b) If the Secretary's decision is to disapprove the final proposed agreement, the Secretary's notice of disapproval must include:

(1) The basis of the disapproval;

(2) The revisions needed, if any, to meet the Secretary's concerns; and

(3) A statement that the decision is a final agency action and is subject to judicial review.

(c) If the Secretary approves the final proposed agreement, the Secretary will maintain a copy of the agreement and any subsequent amendments or supplements to the agreement, and provide copies to persons or entities upon request under the Freedom of Information Act (5 U.S.C. 552).

§ 224.76 Upon notification of disapproval, may a tribe re-submit a revised final proposed agreement?

Yes, within 45 days of receipt of the notice of disapproval, or a later date as the Secretary and the tribe agree to in writing, the tribe may re-submit a revised final proposed agreement, approved by the tribal governing body and signed by the tribe's authorized representative, to the Director that addresses the Secretary's concerns. Unless the Secretary and the tribe otherwise agree, the Secretary must approve or disapprove the revised final proposed agreement within 60 days of the Director's receipt of the revised final proposed agreement. Within 10 days of the Secretary's approval or disapproval of a revised final proposed agreement, the Secretary must notify the tribal governing body in writing;

(a) If the Secretary's decision is to approve the revised final proposed agreement, the Secretary will sign the agreement, which will be effective on the date of the Secretary's signature, and return the signed agreement to the tribal governing body.

(b) If the Secretary's decision is to disapprove the revised final proposed agreement, the Secretary's notice of disapproval must include:

(1) The reasons for the disapproval; and

(2) A statement that the decision is a final agency action and is subject to judicial review.

§ 224.77 Who may appeal the Secretary's decision on a final proposed agreement or a revised final proposed agreement?

Only a tribe applying for an agreement may appeal the Secretary's decision to disapprove a final proposed agreement or a revised final proposed agreement in accordance with the appeal procedures contained in subpart I of this part. No other person or entity may appeal the Secretary's decision. The Secretary's decision to approve a final proposed agreement or a revised final proposed agreement is a final agency action.

Subpart D—Implementation of Tribal Energy Resource Agreements

Applicable Authorities and Responsibilities

§ 224.80 Under what authority will a tribe perform activities for energy resource development undertaken under an agreement?

A tribe will perform activities for energy resource development activities undertaken under an agreement under the authorities provided in the approved agreement. Notwithstanding anything in this part or an approved agreement to the contrary, a tribe will retain all sovereign and other powers it otherwise possesses.

§ 224.81 What laws are applicable to activities under an agreement?

Federal and tribal laws apply to activities under an agreement, unless otherwise specified in the agreement.

§ 224.82 What services will the Department provide to a tribe after approval of an agreement?

After approval of an agreement, the services the Department will provide to a tribe include:

(a) Access to title status information and support services needed by a tribe in the course of evaluating proposals for leases, business agreements, or Rights-of Way;

(b) Coordination between the tribe and the Department for ongoing maintenance of accurate real property records;

(c) Access to technical support services within the Department to assist the tribe in evaluating the physical, economic, financial, cultural, social, environmental, and legal consequences of approving proposals for leases, business agreements, or rights-of-way under an agreement;

(d) Assistance to ensure that violations of the terms of leases, business agreements, or rights-of-way and applicable provisions of Federal law by third parties are handled appropriately; and

(e) Any other Department activities that the agreement does not affect.

§ 224.83 What are the responsibilities of a tribe following execution of leases, business agreements, and rights-of-way under an agreement?

Following execution of leases, business agreements, and rights-of-way under an agreement, a tribe must:

(a) Inform the public of approval of a lease, business agreement, or right-of-way under the agreement;

(b) Send a copy of the executed lease, business agreement, or right-of-way, or amendments, to the Director within one business day of execution. The copy must be sent by certified mail return receipt requested or by overnight delivery; and

(c) Provide, to the Director, sufficient information and documentation of payments made directly to the tribe to enable the Secretary to discharge the trust responsibility of the United States to enforce the terms of, and the rights of the tribe, under a lease, business agreement, or right-of-way.

Leases, Business Agreements, and Rights-of-Way Under an Agreement

§ 224.84 When may a tribe grant a right-of-way under an agreement?

A tribe may grant a right-of-way under an agreement if the grant of right-of-way is over tribal land for a pipeline or an electric transmission or distribution line if the pipeline or electric transmission or distribution line serves.

(a) An electric generation, transmission, or distribution facility located on tribal land; or

(b) A facility located on tribal land that processes or refines energy resources developed on tribal land.

§ 224.85 When may a tribe enter into a lease or business agreement under an agreement?

A tribe may enter into a lease or business agreement for the purpose of energy resource development on tribal land for:

(a) Exploration for, extraction of, processing of, or other development of the tribe's energy resources;

(b) Construction or operation of an electric generation, transmission, or distribution facility located on tribal; and

(c) A facility to process or refine energy resources developed on tribal land.

§ 224.86 Are there limits for terms of leases, business agreements, and rights-of-way entered into under an agreement?

Yes. There are limits for terms of leases, business agreements, and rights-of-way as follows:

(a) For leases and business agreements, except as provided in paragraph (b) of this section, terms are limited to 30 years;

(b) For leases for production of oil resources and gas resources, or both, terms are limited to 10 years and as long after as oil or gas production continues in paying quantities; and

(c) For rights-of-way, terms are limited to 30 years.

Violation or Breach

§ 224.87 What are the responsibilities of a tribe if it discovers a violation or breach?

As soon as practicable after discovering or receiving notice of a Violation or Breach of a lease, business agreement, or right-of-way or a Federal or tribal environmental law resulting from an activity undertaken under a lease, business agreement, or right-of-way, the tribe must provide written notice to the Director describing:

(a) The nature of the Violation or Breach in reasonable detail;

(b) The corrective action taken or planned by the tribe; and

(c) The proposed period for the corrective action to be completed.

§ 224.88 What are the responsibilities of the Director after receiving notice of a violation or breach from the tribe?

After receiving notice of a violation or breach from the tribe, the Director will review the notice and:

(a) If the Director determines that a violation or breach does not cause imminent jeopardy to a physical trust asset, the Director will review, for concurrence or disapproval, the corrective action to be taken by the tribe and the proposed period for completion of the corrective action.

(b) If the Director determines that a violation or breach causes imminent jeopardy to a physical trust asset, the Director will proceed under the imminent jeopardy provisions of subpart F.

(c) Before making a determination whether a violation or breach will or will not cause imminent jeopardy to a physical trust asset, the Director may, as appropriate:

(1) Conduct an on-site inspection; and

(2) Review relevant transactions and reports.

§ 224.89 What procedures will the Secretary use to enforce leases, business agreements, or rights-of-way entered into under an agreement?

When appropriate, the Secretary will use the notification and enforcement procedures established in 25 CFR parts 162, 211 and 225 to ensure compliance with leases and business agreements. When appropriate, the Secretary will use the notification and enforcement procedures of 25 CFR part 169 to ensure compliance with rights-of-way. All enforcement remedies established in 25 CFR parts 162, 211, 225, and 169 are available to the Secretary. The Secretary and a tribe will consult with each other regarding enforcement of and Secretarial assistance needed to enforce leases, business agreements, or rights-of-way.

Subpart E—Interested Party Petitions

§ 224.100 May a person or entity ask the Secretary to review a tribe's compliance with an agreement?

In accordance with this subpart, a person or entity that is an interested party may submit a petition to review a tribe's compliance with an agreement to the Secretary. However, before filing a petition with the Secretary, a person or entity that is an interested party must first exhaust tribal remedies, if a tribe has provided for tribal remedies. If a tribe has not provided for tribal remedies, the person or entity that is an interested party may file a petition directly with the Secretary.

§ 224.101 Who is an interested party?

An interested party is a person or an entity that has demonstrated that an interest of the person or entity has sustained, or will sustain, an adverse environmental impact because of a tribe's failure to comply with an agreement.

§ 224.102 Must a tribe establish a comment or hearing process under an agreement for addressing environmental concerns?

Yes. The Act (25 U.S.C. 3504(e)(2)(C)(iii)(I), (II) and 25 U.S.C. 3504(e)(2)(B)(iii)(X)) and this subpart require that a tribe must establish an environmental review process under an agreement that:

(a) Ensures that the public is notified about and has an opportunity to comment on the environmental impacts of proposed tribal action to be taken under an agreement;

(b) Requires that a tribe respond to relevant and substantive comments about the environmental impacts of a proposed tribal action before a tribe approves a lease, business agreement, or right-of-way; and

(c) Establishes a process for consultation with any affected States regarding off-reservation environmental impacts, if any, resulting from approval of a lease, business agreement, or right-of-way.

§ 224.103 Must a tribe establish a process for public participation regarding an agreement or activities undertaken under an agreement?

No. Except for the environmental review process required by the Act and § 224.63(b)(i), a tribe is not required to establish a process for public participation, including taking comments or holding hearings, regarding an agreement or activities undertaken under an agreement. However, a tribe may elect to establish procedures that permit persons or entities to participate in public hearings or that expand the scope of matters about which the public may comment.

§ 224.104 Must a tribe enact tribal laws, regulations, or procedures permitting persons or entities to allege a tribe's noncompliance with an agreement?

No. A tribe is not required to enact tribal laws, regulations, or procedures permitting persons or entities to allege that a tribe does not comply with its agreement. However, a tribe may elect to enact laws, regulations, or procedures permitting persons or entities to allege that a tribe does not comply with its agreement.

§ 224.105 How may a person or entity obtain copies of tribal laws, regulations, or procedures that establish hearing or comment processes or that permit allegations of a tribe's noncompliance with its agreement?

A person or entity may obtain copies of tribal laws, regulations, or procedures that establish a hearing or comment process or that permit allegations of a tribe's noncompliance under its agreement by requesting such information from the tribe under procedures established in the agreement. Under § 224.63 the agreement must:

(a) Cite applicable tribal laws, regulations, or procedures in place at the time the agreement is approved that establish tribal hearing or comment procedures regarding an agreement or activities undertaken under an agreement;

(b) Cite applicable tribal laws, regulations, or procedures in place at the time the agreement is approved permitting allegations of a tribe's noncompliance with its agreement;

(c) Describe how, when, and under what conditions copies of current applicable tribal laws, regulations, or procedures or amendments may be obtained from the tribe; and

(d) Require a tribe to supply the Secretary with citations to amendments and supplements to applicable laws, regulations, or procedures that the tribe adopts after the effective date of an agreement related to tribal hearing or comment processes or to establishment of tribal remedies for challenging tribal action or inaction under an agreement, which citations the Secretary will append to the agreement.

§ 224.106 If a tribe has enacted tribal laws, regulations, or procedures for challenging tribal action under an agreement, how must the tribe respond to a petitioner's challenge?

If a tribe has enacted tribal laws, regulations, or procedures under which a petitioner may file a petition alleging noncompliance with an agreement, the tribe must:

(a) Within a reasonable time issue a written decision under the tribal laws, regulations, or procedures that addresses the allegation , which decision may include a determination of whether the petitioner is an interested party; and

(b) Provide a copy of its written decision to the petitioner.

§ 224.107 What must a petitioner claim or request in a petition filed with the Secretary?

In a petition filed with the Secretary, a petitioner must:

(a) Claim that the tribe, through its action or inaction:

(1) Has failed to comply with terms or provisions of an agreement; and

(2) That, because of the tribe's noncompliance, the petitioner's interest has sustained or will sustain an adverse environmental impact;

(b) Request that the Secretary review the matters described in the petition; and

(c) Request that the Secretary take action necessary to bring a tribe into compliance with the agreement.

§ 224.108 What must a petition contain?

A petition must contain:

(a) The name and contact information of the petitioner;

(b) Specific facts demonstrating that the petitioner is an interested party under § 224.101;

(c) Specific facts demonstrating that the petitioner participated in a tribal hearing or comment process regarding the tribal action to which the petitioner objects, if a hearing or comment process was available;

(d) Specific facts demonstrating that the petitioner exhausted tribal remedies, if tribal laws, regulations, or procedures

permitted the petitioner to allege tribal noncompliance with an agreement to which the petitioner objects and that the petitioner followed to completion the procedures accorded by those tribal laws, regulations, or procedures;

(e) A description of the petitioner's allegation of noncompliance with an agreement;

(f) A description of the adverse environmental impact that the petitioner's interest has sustained or will sustain because of the tribe's noncompliance with the agreement;

(g) A copy of any written decisions the tribe issued responding to the petitioner's allegation;

(h) If applicable, a statement that the tribe has issued no written decision within a reasonable time related to an allegation a petitioner has filed with the tribe under applicable tribal laws, regulations, or procedures;

(i) A description of the action the Secretary may take under § 224.120 to bring the tribe into compliance with the agreement; and

(j) Any other information relevant to the petition.

§ 224.109 What must a petitioner do before filing a petition with the Secretary?

Before a petitioner may file a petition with the Secretary under this subpart, the petitioner must have:

(a) Participated in the tribal process, if the tribe has laws, regulations, or procedures that provided the petitioner an opportunity to participate in a tribal hearing or comment process regarding allegations of tribal noncompliance; and

(b) Pursued to completion procedures accorded by those tribal laws, regulations, or procedures.

§ 224.110 When may a petitioner file a petition with the Secretary?

A petitioner may file a petition with the Secretary by delivering the petition to the Director:

(a) Within 45 days of receipt of the tribe's written decision addressing the allegation of noncompliance under applicable tribal laws, regulations, or procedures.

(b) If the tribe fails within a reasonable period to issue a written decision to an allegation of noncompliance with an agreement a petitioner brings under applicable tribal laws, regulations, or procedures, the Secretary will deem the allegation as having been denied. The Secretary will determine if the petitioner has filed the petition within a reasonable period following the constructive denial in light of the applicable facts and circumstances.

(c) A petitioner may file a petition directly with the Secretary, if the tribe has no tribal laws, regulations or procedures that provided the petitioner an opportunity to allege tribal noncompliance with an Agreement.

§ 224.111 What must the Director do upon receipt of a petition?

Within 20 days after receipt of a petition, the Director must:

(a) Notify the tribe in writing that the Director has received a petition;

(b) Provide a copy of the complete petition to the tribe;

(c) Initiate a petition consultation with the tribe that will address the petitioner's allegation of a tribe's noncompliance with an agreement and alternatives to resolve the noncompliance; and

(d) Notify the tribe in writing when the petition consultation is complete.

§ 224.112 What may a tribe do after it completes petition consultation with the Director?

Within 45 days of the date of the Director's notice that the tribal petition consultation is complete, the tribe may respond to the petition by submitting a written response to the Director and the petitioner. If the tribe fails to submit a written response to the petition within those 45 days, the tribe will not be permitted to submit any additional information to the Director addressing the petition.

§ 224.113 How may the tribe address a petition in its written response?

In its written response, the tribe may or may not dispute the petitioner's claims.

(a) If the tribe disputes the petitioner's claims of tribal noncompliance with an agreement, in its written response, the tribe must describe why it disputes the petitioner's claims of noncompliance, including the tribe's interpretation of relevant provisions of the agreement and other legal requirements;

(b) Whether or not the tribe disputes the petitioner's claims of tribal noncompliance with an agreement, in its written response, the tribe may:

(1) Discuss whether the petitioner is an interested party;

(2) State whether the petitioner participated in a hearing or comment process that was available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition;

(3) State whether the petitioner has exhausted tribal remedies;

(4) Identify the steps, if any, the tribe will take to comply with the agreement and state when the steps will be taken; or

(5) Offer a resolution of the petitioner's claim of the adverse environmental impact the petitioner's interest has sustained or will sustain because of the tribe's noncompliance with an agreement.

§ 224.114 What will the Director do if the tribe offers a resolution of a petitioner's claim in which the petitioner concurs?

If the tribe submits a proposed resolution and a written statement signed by the petitioner that shows the petitioner concurs with the tribe's proposed resolution of the claim of adverse environmental impact to the petitioner's interest, the Director may accept the resolution, dismiss the petition, and notify the parties of the petition's dismissal.

§ 224.115 When must the Director make threshold determinations about a petition?

The Director must make threshold determinations about a petition if:

(a) The tribe does not submit a timely written response to a petition to the Director and the petitioner;

(b) The tribe's written response does not include a proposed resolution in which the petitioner concurs; or

(c) The Director did not accept the tribe's proposed resolution in which the petitioner agreed.

§ 224.116 What must the Director consider in making threshold determinations about a petition?

The Director must consider the information contained in the petition and the information submitted in the tribe's written response, if applicable, and determine as threshold matters whether:

(a) The petitioner is an interested party because;

(1) An interest of the petitioner has sustained or will sustain an adverse environmental impact; and

(2) The adverse environmental impact was the result of the failure of the tribe to comply with an agreement.

(b) The petitioner participated in a tribal hearing or comment process under tribal laws, regulations, or procedures that were available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition.

(c) The petitioner exhausted tribal remedies under § 224.109.

§ 224.117 When must the Director dismiss a petition after making the threshold determinations about a petition?

After considering threshold determinations under § 224.116, the Director must dismiss the petition if the Director determines that:

(a) The petitioner is not an interested party;

(b) The petitioner failed to participate under tribal laws, regulations, or

procedures in a tribal hearing or comment process that was available with respect to the allegation of the tribe's noncompliance with an agreement that is the subject of the petition, unless failure to participate was a result of the tribe's failure to provide the petitioner with notice of the tribal hearing or comment process following the petitioner's timely request for information; or

(c) The petitioner failed to exhaust tribal remedies before submitting the petition, unless the failure to exhaust tribal remedies was because the tribe did not:

(1) Issue a written decision within a reasonable time under tribal laws, regulations, or procedures that permitted an allegation of a tribe's noncompliance with an agreement that is the subject of the petition; or

(2) Appropriately respond to the petitioner's timely request for copies of current applicable tribal laws, regulations, or procedures; permitting an allegation of a tribe's noncompliance with an agreement.

§ 224.118 How must the Director proceed if the Director dismisses a petition based on consideration of threshold determinations?

If the Director dismisses a petition based on consideration of threshold determinations, the Director must:

(a) Issue a written decision of dismissal that states the basis for the decision and includes finding of fact and conclusions of law; and

(b) Provide a copy of the written decision of dismissal to the petitioner and the tribe, including a notification of the petitioner's right to appeal the dismissal to the Deputy Assistant Secretary—Policy and Economic Development under subpart I.

§ 224.119 How must the Director proceed if the Director does not dismiss the petition based on threshold determinations?

If the Director does not dismiss the petition under § 224.117, the Director must:

(a) Evaluate the petition and determine whether the petition states a claim that:

(1) The tribe failed to comply with one or more terms or provisions of an agreement; and

(2) The Secretary's action is necessary to cure or otherwise resolve each claim of adverse environmental impact.

(b) If the Director determines that the petition fails to state a claim, the Director must:

(1) Issue a written decision of dismissal setting forth the basis for the decision;

(2) Provide a copy of the written decision of dismissal to the petitioner and the tribe; and

(3) Notify the tribe and the petitioner of the petitioner's right to appeal the dismissal to the Deputy Assistant Secretary—Policy and Economic Development under subpart I.

§ 224.120 How must the Director proceed with a petition if it meets the threshold determinations?

If the Director determines a petition meets the threshold determinations of § 224.116, the Director must:

(a) Issue a written notice to the tribe which states that the Director has accepted the petition and that the tribe must provide a written response within 30 days of receipt of the written notice or provide a written statement that the tribe is declining to provide a written response;

(b) Review and analyze the claims alleged in the petition and the tribe's response, if any, to determine what action the tribe or the Secretary must take to prevent, diminish, eliminate, or reverse the adverse environmental impact alleged in the petition;

(c) Review and analyze the claims alleged in the petition and the tribe's response to determine what action the tribe or the Secretary must take to cure the alleged violation of the agreement;

(d) Review and analyze the tribe's proposed resolution, if any, to determine whether that proposal will resolve the alleged adverse environmental impact;

(e) Accept or reject the tribe's proposed resolution;

(f) Issue a written decision to the petitioner and the tribe that states the basis for the Director's decision including:

(1) Findings of fact and conclusions of law; and

(2) A statement that either party, the petitioner or the tribe, has the right to appeal the Director's decision to the Deputy Assistant Secretary—Policy and Economic Development under subpart I; and

(g) Issue a notice informing the tribe as to what action the Director has determined the tribe must take to cure the violation of the agreement, if any, or whether the Director has determined that the Secretary must take specified actions to cure the violation of the agreement, which may include reassumption under subpart G.

§ 224.121 What action must the Director take to bring a tribe into compliance with an agreement?

Upon review of a petition, if the Director determines, that a tribe does not comply with an agreement, the Director must take action that the Director determines to be necessary to ensure compliance with the agreement, including:

(a) Temporarily suspending any activity under a lease, business agreement, or right-of-way until the tribe complies with the agreement;

(b) Rescinding approval of all or part of the agreement, or

(c) Recommending that the Secretary reassume activities under subpart G.

§ 224.122 When must the Director act on a petition?

(a) Within 120 days of the Director's receipt of a petition, the Director must act on the petition. The Director may:

(1) Dismiss the petition;

(2) Grant the petition; or

(3) Take other action on the petition under this subpart.

(b) The Director may extend the time for acting on a petition up to 120 days in any case in which the Director determines that additional time is necessary to evaluate the allegations of the petition and the tribe's written response, if any. If the Director decides to extend the time, the Director must notify the petitioner and the tribe in writing of a determination and extension before expiration of the initial 120-day period.

§ 224.123 How may a tribe or a petitioner appeal the Director's disposition of a petition?

Either a tribe or a petitioner may appeal the Director's decision dismissing, granting, or otherwise disposing of the petition under this subpart to the Deputy Assistant Secretary—Policy and Economic Development.

Subpart F—Periodic Reviews

§ 224.130 What is the purpose of this subpart?

This subpart describes how the Secretary and a tribe will develop and perform the periodic review and evaluation process required by the Act and by an agreement, when the Secretary may conduct other reviews and evaluations, and how the Secretary will determine and remedy noncompliance with an agreement and imminent jeopardy to a physical trust asset.

§ 224.131 What is a periodic review and evaluation?

A periodic review and evaluation is an examination the Director performs to monitor a tribe's performance of activities associated with the development of energy resources and to

review compliance with an agreement. During the agreement consultation, a tribe and the Director will develop a periodic review and evaluation process that addresses the tribe's specific circumstances and the terms and conditions of the tribe's agreement. The tribe will include the agreed upon review and evaluation process in its final proposed agreement.

§ 224.132 How does the Director conduct a periodic review and evaluation?

(a) The Director will conduct a periodic review and evaluation under the agreement, in consultation with the tribe, and in cooperation with other Department bureaus and offices whose activities were assumed by the tribe.

(b) The Director will communicate with the tribal Designated Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Director will:

(1) Review transactions and reports prepared under the agreement;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the agreement.

(d) Review the effect on physical trust assets resulting from activities undertaken under an agreement.

(e) Upon written request, the tribe must provide the Director with records and documents relevant to the provisions of an agreement.

§ 224.133 What must the Director do after a periodic review and evaluation?

After a periodic review and evaluation, the Director must prepare a written report of the results of the periodic review and evaluation and send the report to the tribe.

§ 224.134 How often must the Director conduct a periodic review and evaluation?

The Director must conduct a periodic review and evaluation annually during the first 3 years of an agreement. After the third annual review and evaluation, the Secretary and the tribe may mutually agree that periodic reviews and evaluations will be conducted once every 2 years.

§ 224.135 Under what circumstances may the Director conduct additional reviews and evaluations?

The Director may conduct additional reviews and evaluations:

(a) At a tribe's request;

(b) As part of an investigation undertaken under a notice of Violation or Breach a tribe submits to the Director;

(c) As part of an investigation undertaken under a petition submitted under subpart E; or

(d) As follow-up to a determination of harm or the potential for harm to a physical trust asset previously identified in a periodic review and evaluation.

Noncompliance

§ 224.136 How will the Director's written report address a tribe's noncompliance with Federal law or the terms of an agreement?

If the Director concludes, as a part of any review and evaluation or investigation of a notice of violation or breach, that the tribe has not complied with Federal law or the terms of an agreement, the Director's report must include a determination of whether the tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset. If the Director determines that the tribe's noncompliance has harmed or may harm a physical trust asset, the Director must also determine whether the noncompliance poses imminent jeopardy to a physical trust asset.

§ 224.137 What must the Director do if a tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?

If, because of the tribe's noncompliance with Federal law or the terms of an agreement, the Director determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and

(d) Determine what action, if any, the Secretary must take to protect the physical trust asset.

§ 224.138 What must the Director do if a tribe's noncompliance has caused imminent jeopardy to a physical trust asset?

If the Director determines that a tribe's noncompliance with Federal law or the terms of an agreement has caused imminent jeopardy to a physical trust asset, the Director must:

(a) Document the issue in the written report of the review and evaluation; and

(b) Immediately notify the tribe by a telephone call to the tribal Designated official followed by a written notice by facsimile to the tribal Designated official and the tribal governing body of the imminent jeopardy to a physical trust asset which notice must contain:

(1) A description of the tribe's noncompliance with Federal law or the terms of the agreement;

(2) A description of the physical trust asset and the nature of the imminent jeopardy to a physical trust asset resulting from the tribe's noncompliance; and

(3) An order to the tribe to cease specific conduct or take specific action deemed necessary by the Director to correct any condition that caused the imminent jeopardy to a physical trust asset.

§ 224.139 What must a tribe do after receiving a notice of imminent jeopardy to a physical trust asset?

(a) Upon receipt of the notice of imminent jeopardy to a physical trust asset, the tribe must cease specific conduct or take specific action ordered by the Director as necessary to correct any condition causing imminent jeopardy to a physical trust asset; and

(b) Within 5 days of receipt of a notice of imminent jeopardy to a physical trust asset the tribe must submit a written response to the Director that:

(1) Responds to the Secretary's finding that the tribe has failed to comply with applicable Federal law or the terms of the agreement;

(2) Responds to the Secretary's finding of imminent jeopardy to a physical trust asset;

(3) Describes the status of the tribe's cessation of specific conduct or specific action the tribe has taken to correct any condition causing imminent jeopardy to a physical trust asset; and

(4) Describes what further actions, if any, the tribe proposes to take to correct any condition causing imminent jeopardy to a physical trust asset.

§ 224.140 What must the Secretary do if the tribe fails to respond to or does not comply with the Director's order?

If the tribe does not respond to or does not comply with the Director's order under § 224.138(b)(iii), the Secretary may take any actions the Secretary deems appropriate to protect the physical trust asset and will immediately reassume all activities the tribe assumed under the agreement. The procedures in subpart G do not apply to reassumption under this section.

§ 224.141 What must the Secretary do if the tribe responds to the Director's order?

(a) If the tribe responds in a timely manner to the Director's order under § 224.138, the Secretary must:

(1) Consider the tribe's response;

(2) Determine whether or not the tribe has complied with the agreement and Federal law; and

(3) If the Secretary determines, after reviewing the tribe's response, that the tribe has not complied with the agreement or with Federal law, the

Secretary will determine whether the noncompliance caused imminent jeopardy to a physical trust asset.

(b) If the Secretary determines that the tribe's noncompliance has caused imminent jeopardy to a physical trust asset, the Secretary may:

(1) Order the tribe to take further action deemed necessary by the Secretary to protect the physical trust asset; or

(2) Take action deemed necessary to protect the physical trust asset, including reassumption under subpart G.

(c) If the Secretary determines, after reviewing the tribe's response, that the tribe has complied with the agreement and with Federal law, the Secretary will withdraw the Director's order.

(d) The Secretary must base a finding of imminent jeopardy to a physical trust asset on the tribe's violation of an agreement or applicable Federal law.

Subpart G—Reassumption

§ 224.150 What is the purpose of this subpart?

This subpart explains when and how the Secretary may reassume all or certain activities included within an agreement without the consent of a tribe.

§ 224.151 When may the Secretary reassume activities under an agreement?

Upon issuing a written finding of imminent jeopardy to a physical trust asset, the Secretary may reassume activities under an agreement in accordance with this subpart. The Secretary may issue a finding of imminent jeopardy to a physical trust asset following any review and evaluation of a tribe's compliance with an agreement. The Secretary may also reassume activities approved under an agreement in response to a petition from an interested party under subpart E. Only the Secretary or the Assistant Secretary—Indian Affairs may reassume activities under an agreement.

§ 224.152 Must the Secretary always reassume the activities under an agreement upon a finding of imminent jeopardy to a physical trust asset?

(a) The Secretary may take whatever actions the Secretary deems appropriate to protect the physical trust asset. These actions may, at the discretion of the Secretary, include reassumption of the activities under an agreement.

(b) If the tribe does not respond to or does not comply with the Director's order under § 224.138(b)(iii), the Secretary will immediately reassume all activities the tribe assumed under the agreement. The procedures in this subpart will not apply to that immediate reassumption.

Notice of Intent To Reassume

§ 224.153 Must the Secretary notify the tribe of an intent to reassume activities under an agreement?

If the Secretary determines under § 224.152 that reassumption is appropriate to protect the physical trust asset, the Secretary will issue a written notice to the tribal governing body of the Secretary's intent to reassume.

§ 224.154 What must a notice of intent to reassume include?

A notice of intent to reassume must include:

(a) A statement of the reasons for the intended reassumption, including, as applicable, a copy of the Secretary's written finding of imminent jeopardy to a physical trust asset;

(b) A description of specific measures that the tribe must take to correct the violation and any condition that caused the imminent jeopardy;

(c) The time period within which the tribe must take the measures to correct the violation and any condition that caused the imminent jeopardy to a physical trust asset; and

(d) The effective date of the reassumption if the tribe does not meet the requirements in paragraphs (b) and (c) of this section.

§ 224.155 When must a tribe respond to a notice of intent to reassume?

The tribe must respond to the Director in writing by mail, facsimile, or overnight express within 5 days of receipt of the Secretary's notice of intent to reassume. If sent by mail, the tribe must send the response by certified mail, return receipt requested, and the postmark date will be considered the date of response.

§ 224.156 What information must the tribe's response to the notice of intent to reassume include?

The tribe's response to the notice of intent to reassume must state:

(a) That the tribe has complied with the Secretary's requirements in the notice of intent to reassume;

(b) The measures that the tribe is taking to comply with the Secretary's requirements, and when the tribe will complete such measures, if the time required under § 224.154(c) to complete the required measures is greater than 5 days; or

(c) A declaration that the tribe will not comply with the Secretary's required measures.

§ 224.157 How must the Secretary proceed after receiving the tribe's response?

(a) If the Secretary determines that the tribe's measures to comply with the Secretary's requirements are adequate or will be adequate to correct the violation and any condition that caused the imminent jeopardy or the adverse environmental impact alleged in a petition from an interested party, the Secretary will:

(1) Notify the tribe of the acceptance in writing; and

(2) Terminate the reassumption proceedings in writing.

(b) If the Secretary determines that the tribe's measures to comply with the Secretary's requirements are not adequate, then the Secretary will issue a written notice of reassumption.

§ 224.158 What must the Secretary include in a written notice of reassumption?

The notice of reassumption must include:

(a) A description of the activities the Secretary is reassuming;

(b) The reasons for the determination under § 224.157(a);

(c) The effective date of the reassumption; and

(d) A statement that the decision is a final agency action and is subject to judicial review.

§ 224.159 How will reassumption affect valid existing rights that vested or lawful actions taken by the tribe or the Secretary before the effective date of the reassumption?

Reassumption will not affect valid existing rights that vested before the effective date of the reassumption or lawful actions the tribe and the Secretary took before the effective date of the reassumption.

§ 224.160 How will reassumption affect an agreement?

Reassumption of an agreement applies to all activities undertaken under an agreement.

§ 224.161 How may reassumption affect the tribe's ability to modify an agreement, administer additional activities or to assume administration of activities that the Secretary previously reassumed?

Following reassumption, the tribe may request to modify an agreement, administer additional activities, or assume administration of activities the Secretary previously reassumed. In reviewing a subsequent tribal request, however, the Director may consider the fact that activities were reassumed and any changes in circumstances supporting the tribe's request.

Subpart H—Rescission

§ 224.170 What is the purpose of this subpart?

This subpart explains the process and requirements under which a tribe may rescind an agreement and return to the Secretary the responsibility to approve any future leases, business agreements, or rights-of-way related to energy resource development previously covered under the agreement.

§ 224.171 Who may rescind an agreement?

A tribe, acting through a resolution passed by the tribal governing body, may rescind an agreement and return to the Secretary the responsibility to approve any future leases, business agreements, or rights-of-way related to energy resource development.

§ 224.172 May a tribe rescind its authority to approve or disapprove a specific future lease, business agreement, or right-of-way or the development of a specific energy resource or geographic area?

No. A tribe may only rescind an agreement, not its authority to approve a specific future lease, business agreement, or right-of-way under an agreement or the development of a specific energy resource or geographic area.

§ 224.173 How does a tribe rescind an agreement?

To rescind an agreement, a tribe must submit to the Secretary a written tribal resolution or other official action of the tribe's governing body voluntarily rescinding the agreement.

§ 224.174 When does a voluntary rescission become effective?

A voluntary rescission becomes effective on the date specified by the Secretary, provided that the date is no more than 90 days after the Secretary receives the tribal resolution or other official action the tribe submits under § 224.173.

§ 224.175 How will rescission affect rights that vested before the effective date of the rescission or lawful actions taken by the tribe or the Secretary before the effective date of the rescission?

Rescission does not affect rights that vested before the effective date of the rescission or lawful actions taken by the tribe and the Secretary before the effective date of the rescission.

Subpart I—General Appeal Procedures

§ 224.180 What is the purpose of this subpart?

The purpose of this subpart is to explain who may appeal Departmental decisions or inaction under this part and the initial administrative appeal processes, and general administrative appeal processes, including how 25 CFR part 2 and 43 CFR part 4 apply, and the effective dates for appeal decisions.

§ 224.181 Who may appeal Department decisions or inaction under this part?

The following persons or entities may appeal Department decisions or inaction under this part:

(a) A tribe that is unfavorably affected by a decision of or inaction by an official of the Department of the Interior under this part;

(b) A person or entity who has entered into a lease, right-of-way, or business agreement and is unfavorably affected by a decision of or inaction by a Department official under this part; or

(c) An interested party who is unfavorably affected by a decision of or inaction by the Director under subpart E, provided that the interested party may appeal only those issues raised in its prior participation under subpart E and may not appeal any other decision rendered or inaction under this part.

§ 224.182 What is the Initial Appeal Process?

The initial appeal process is as follows:

(a) Within 30 days of receipt of an adverse decision by the Director or within 30 days after the time periods within which the Director was required to act under subpart E, a party that may appeal under this subpart may file an appeal to the Deputy Assistant Secretary—Policy and Economic Development.

(b) Within 60 days of receipt of an appeal, the Deputy Assistant Secretary—Policy and Economic Development will review the record and issue a written decision on the appeal.

(c) Within 7 days of a decision by the Deputy Assistant Secretary—Policy and Economic Development, the Secretary will provide a written copy of the decision to the tribe and other participating parties.

§ 224.183 What other administrative appeals processes also apply?

The administrative appeal processes in 25 CFR part 2 and 43 CFR part 4, subject to the limitations in § 224.184, apply to:

(a) An interested party's appeal from an adverse decision or inaction by the Deputy Assistant Secretary—Policy and Economic Development under § 224.182; and

(b) An appeal by a tribe or a person or entity that has entered into a lease, business agreement, or right-of-way from an adverse decision by or the inaction of a Department official taken under this part.

§ 224.184 How do other administrative appeals processes apply?

The administrative appeals process in 25 CFR part 2 and 43 CFR part 4 are modified, only as they apply to appeals under this part, as follows:

(a) The definition of interested party in 25 CFR part 2 and as incorporated in 43 CFR part 4 does not apply to this part.

(b) The right of persons or entities other than an appealing party to participate in appeals under 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except as permitted under paragraph (c) of this section.

(c) The only persons or entities, other than appealing parties under § 224.181(a) to (c), who may participate in an appeal under this part are:

(1) The Secretary, if an appeal is taken from a decision of the Director or Deputy Assistant Secretary—Policy and Economic Development;

(2) A tribe, which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by a person or entity who has entered into a lease, business agreement, or right-of-way with the tribe or by an interested party under this part; or

(3) A person or entity that has entered into a lease, business agreement, or right-of-way with a tribe, which may intervene, appear as an amicus curiae, or otherwise appear in any appeal taken under this part by the tribe or by an interested party under this part.

(d) Any obligation to provide notice and service upon non-appealing persons provided in 25 CFR part 2 and 43 CFR part 4 does not apply to this part, except that notice and service of all documents must be served consistent with the requirements of 25 CFR part 2 and 43 CFR part 4 on those persons or entities identified in paragraph (c) of this section.

§ 224.185 When are decisions under this part effective?

Decisions under subpart I are effective as follows:

(a) Decisions of the Secretary disapproving a final proposed agreement or revised final proposed agreement under subpart C, finding imminent jeopardy to a physical trust asset under subpart F, and decisions by the Secretary or the Assistant Secretary—Indian Affairs to reassume a program under subpart G are final for the Department and effective upon issuance.

(b) Decisions under this part, other than those in paragraph (a) of this

section that are unfavorable to a tribe and in which an appeal is pending are not final for the Department and are not effective pending appeal, unless:

(1) Before the decision, the tribe had an opportunity for a hearing;

(2) After the decision was rendered, the tribe had a reasonable amount of time to attain compliance with the agreement; and

(3) The Interior Board of Indian Appeals (Board), the Secretary, or Assistant Secretary—Indian Affairs issued a written decision that, notwithstanding a reasonable period to attain compliance with the agreement, the tribe has not attained compliance.

(c) All other decisions rendered by the Board or the Assistant Secretary of Indian Affairs in an appeal from a Director's decision under subparts E, F, or G are effective when rendered by the Board, the Secretary, or the Assistant Secretary—Indian Affairs.

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Part IV

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of the Republic of Ghana; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–11]

Notice of Entering Into a Compact With the Government of the Republic of Ghana

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Ghana. Representatives of the United States Government and the Government of the Republic of Ghana executed the Compact documents on August 1, 2006.

Dated: August 9, 2006.

William G. Anderson Jr.,

Vice President & General Counsel (Acting).

Summary of Millennium Challenge Compact With the Government of the Republic of Ghana

I. Introduction

The five-year, approximately $547 million Millennium Challenge Compact aims at reducing poverty by raising farmer incomes through private sector-led, agribusiness development. To this end, the program focuses on increasing the production and productivity of high-value cash and food staple crops in certain areas of Ghana, and on enhancing the competitiveness of Ghana's export base in horticultural and other traditional crops.

Agriculture is the backbone of Ghana's economy; it accounts for approximately 40 percent of the country's gross domestic product, directly employs approximately 60–70 percent of the labor force, and generates more than 55 percent of foreign exchange earnings.

The program will operate in 23 districts in the northern region, the central Afram Basin region and the southern horticultural belt in the southeastern region (each region, an Intervention Zone), where poverty rates are generally above 40 percent. In fact, in the northern region and parts of the Afram Basin region, the incidence of poverty in the rural population is as high as 90 percent, with incomes below $2 a day.

II. Program

The program consists of three projects: (i) Agriculture Project; (ii) Transportation Project; and (iii) Rural Services Project.

Agriculture Project

- *Farmer and Enterprise Training in Commercial Agriculture:* Accelerate the development of commercial skills and capacity among Farmer-Based Organizations (FBOs) and their business partners, including entities adding value to agricultural crops such as processors and marketers.
- *Irrigation Development:* Establish a limited number of retention ponds and weirs requested by the FBOs and FBO partnerships for whom access to water is critical to the success of their businesses.
- *Land Tenure Facilitation:* Improve tenure security for existing land users and facilitate access to land for higher value agricultural crops in the Intervention Zones.
- *Improvement of Post Harvest Handling and Value Chain Services:* Facilitate strategic investments by FBOs and FBO partnerships in post-harvest infrastructure improvements and build the capacity of the public sector to introduce and monitor compliance with international plant protection standards.
- *Improvement of Credit Services for On-Farm and Value Chain Investments:* Augment the supply of, and access to, credit provided by financial institutions operating in the Intervention Zones, providing seasonal credit to FBOs through commercial and rural banks, as well as through non-traditional channels such as input suppliers, and medium-term credit through banks to finance capital goods such as irrigation and post-harvest processing and storage facilities.
- *Rehabilitation of Feeder Roads:* Rehabilitate up to 950 kilometers of feeder roads in eight districts in the Intervention Zones to reduce transportation costs and time, to increase access to major domestic and international markets, and to facilitate transportation linkages from rural areas to social service networks (including, for instance, hospitals, clinics and schools).

Transportation Project

- *Upgrades to Sections of N1 Highway:* Reduce the bottleneck in accessing the International Airport and the Port of Tema and support an expansion of Ghana's export-directed horticulture base beyond current production, by upgrading of 14 kilometers of the National Highway (N1 Highway) between Tema and Accra.
- *Improvements of Trunk Roads:* Facilitate the growth of agriculture and access to social services by rehabilitating or constructing up to 230 kilometers of trunk roads in the Afram Basin region.
- *Improvements of Lake Volta Ferry Services:* Facilitate the growth of agriculture in the Afram Basin region by improving the ferry service of Volta Lake Transport Company that connects Adawso on the southern shore to Ekye Amanfrom on the northern shore.

Rural Services Project

- *Strengthening of Public Sector Procurement Capacity:* Support the development of procurement professionals and reinforce the capabilities of the Government of Ghana (GoG) to procure goods and services, reinforcing execution of the overall program and, in particular, the community services.
- *Support for Community Services:* Complement the Agriculture Project by funding construction and rehabilitation of educational facilities, construction and rehabilitation of water and sanitation facilities and electrification of rural areas, and by providing capacity building support to local government institutions.
- *Strengthening of Rural Financial Services:* Automate and interconnect 121 rural banks that are private, community-owned banks, and provide other improvements in the national payments systems that will draw a large number of people currently not served or under-served into the financial system.

The table below outlines the estimated MCC contribution to the program by year and category over the term of the Compact.

[US $ MILLION]

Description	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Agriculture Project	32.6	47.1	70.3	65.1	25.9	241.0
Transportation Project	14.8	20.1	35.4	43.1	29.7	143.1
Rural Services Project	15.6	21.1	30.5	34.1	.....	101.3

[US $ MILLION]—Continued

Description	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Administration of Program & Audits	8.8	8.8	10.0	10.3	8.7	46.6
Monitoring & Evaluation of Program	3.0	3.0	3.0	3.0	3.0	15.0
Total	74.8	100.1	149.2	155.6	67.3	547.0

III. Impacts

Under the Agriculture Project, approximately 51,000 farm households are expected to complete a comprehensive program in agronomic, organizational and business skills training as members of FBOs. These households with five members on average comprise over 250,000 people. Less directly, the improvement of the GoG's Ministry of Food and Agriculture's extension services and the agents' work with FBOs will have collateral spillover benefits for a large number of farmers which are not quantified.

The Agriculture Project will also support the development and improved operations of approximately 120 small- and medium-size enterprises providing services to agriculture where concentrations of farmer and FBO training will have taken place. Increased access to credit will finance a majority of these changes, including irrigation and post-harvest infrastructure. Its support to facilitate the formal acquisition of land will decrease the transaction costs associated with negotiating and formalizing land leases with traditional land custodians, enhancing the willingness and ability of farmers to invest in on-farm improvements. As a further measure to improve the local profitability of agriculture, the Agriculture Project will finance the improvement of over 950 kilometers of feeder roads, which, along with the trunk roads below, will benefit a total population of more than 120,000 farming households with over 600,000 members. These activities will increase farm incomes from cultivation by U.S. $450 to about U.S. $1,000. For many of the poor, the compact intervention will represent an increase of one dollar or more in average income per person per day.

The Transportation Project is expected to open new economic opportunities for rural households by lowering transportation costs, including travel times, for both individuals and cargo, to markets and social service delivery points. Because the N1 Highway is a principal route from the south to the Port of Tema, widening the N1 Highway should benefit approximately 150,000 daily users. Upwards of 500,000 people in the surrounding area of Accra, including consumers and agricultural export producers and other users of the highway in the Greater Accra Metropolitan Area, would benefit from the improved operation of the N1 Highway. Rehabilitation and upgrading of trunk roads and expansion of the ferry service in the Afram Basin region are expected to benefit up to 100,000 farm households, most of which are among the rural poor.

By improving both the community-service infrastructure and enhancing local government capacity to provide, operate and maintain community services related to this infrastructure, the Rural Services Project should benefit several tens of thousands of households, decrease the incidence of disease and the time spent collecting water and fuel, and increase school attendance, which in turn should lead to greater productivity. Linking banks and their branches nationwide via a wide-area network should increase access to financial services for the entire population of Ghana, especially in remote rural areas, in the form of savings, credit or cash transfers and remittances. Finally, strengthening of public sector procurement capacity will improve execution of the Support for Community Services activity directly and, more generally, all citizens of Ghana with material improvements in performance of the entire public sector.

In conclusion, as a first approximation, the program is anticipated to help directly alleviate the poverty of over 230,000 Ghanaians, and to substantially enhance the livelihoods and welfare of over one million Ghanaians in the aggregate.

IV. Program Management

Through an act of its Parliament, the GoG has created the Millennium Development Authority (MiDA) that will serve as the entity accountable for the implementation of the program under the Compact. MiDA will be governed by a Board of Directors comprised of members of GoG, the private sector, and the non-governmental organization (NGO) community. A chief executive officer will manage the day-to-day activities of MiDA and will be supported by key officers in the areas of operations, agriculture, infrastructure, financial services, land, and administration. MiDA will remain accountable for the successful execution of the program while working through project implementers, whose interaction will be facilitated by a fiscal and procurement agent. As an organ of the GoG, MiDA will be subject to GoG audit requirements alongside those audit requirements of MCC under the Compact.

V. Other Highlights

A. Consultative Process

Ghana's Poverty Reduction Strategy process provided the basis for its process of consultation regarding the development of its proposal for the program. Specifically, in 2004, the GoG held the first of a series of Compact-related consultations with civil society members of the Ghanaian Association of Private and Voluntary Organizations in Development. Subsequent consultations included: (i) Initial consultations with stakeholders at both the national and local levels to focus the program's objectives; (ii) consultations with stakeholders in each district within each Intervention Zone throughout the design of the program regarding the exact type of interventions, proposed locations, arrangements for implementation, as well as the ownership structure for certain infrastructure investments; (iii) consultations with NGOs representing the environmental and social sector (including women and youth), local agribusinesses and farmers. MCC observed a number of the consultations, both local and national. The consultative process is ongoing and is expected to continue through the term of the Compact.

B. GoG Commitment and Effectiveness

The GoG is committed to assembling a capable team to staff MiDA. Recruitment is underway currently for the chief executive officer of MiDA and 13 other key officers who will directly support the implementation of the program. The incumbent Minister of Public Sector Reform, who led the GoG's team to develop the Compact, will become the chair of the board of

directors of MiDA. Other members of the board will come from line ministries directly relevant to the program, and the private sector and NGOs as a means to provide feedback on the implementation of the program. One advisory committee for each Intervention Zone will be formed to bring the on-the-ground perspective back to the MiDA. President Kufuor remains engaged, providing leadership and ensuring that MiDA will have the inter-ministerial cooperation necessary for the success of the program. In addition, the GoG will undertake to make up eventual shortfalls in funding, if any, necessary to sustain the program in such areas as road maintenance, community services recurrent costs, and environmental mitigation.

C. Sustainability

The activities under the Agriculture Project will create new and strengthen existing input suppliers, processors and marketers and enhance a climate that attracts additional outside investment in the agriculture sector, thus leading to its continued growth. The GoG has affirmed that it will maintain the rehabilitated roads in accordance with standards that have been agreed with the broad donor community and will increase funding commitment to the road sector accordingly. MCC is requiring from GoG that it will provide for the staffing, equipping, and other recurrent costs of new (and some existing) infrastructure investments. Selection criteria for community services infrastructure will also stipulate a minimum level of community contribution to investment and participation in upkeep of new facilities. Environmental and social sustainability of the program will be enhanced through oversight and ongoing public consultation. The Rural Services Project will include a capacity building component to reinforce participatory planning, procurement, financial management, maintenance planning and budgeting, operations and maintenance of physical infrastructure. MCC investments in secure land access will emphasize community consultation and resolution of disputes, important for durable secure tenure.

D. Environment and Social Assessments

According to MCC's environmental guidelines, the Agriculture Project is classified as ''Category A'' (with the exception of the credit-related activity that is classified as a ''Category D'' and requires lending guidelines that stipulate environmental requirements). Specifically, potentially adverse environmental impacts may result from the irrigation retention ponds and weirs, the feeder roads, and large-scale agricultural intensification and conversion (e.g., deforestation, monoculture). The Transportation Project is classified as ''Category A'' due to potentially adverse site-specific impacts resulting from improvements to the N1 Highway and select trunk roads, including the acquisition of, or compensation for, approximately 800 permanent and temporary structures (e.g., containers and kiosks) on the N1 Highway's right of way. Furthermore, there will be both induced and cumulative impacts on the Afram Basin region resulting from increased access provided by the trunk roads and ferries. The Rural Services Project is classified as ''Category B'' and will require selection criteria for provision of community services that take into account environmental and social impacts.

Overall, because of the breadth and scope of the proposed program, strategic environmental assessments and baseline studies will be required for each Intervention Zone prior to initiating any required project-specific environmental impact assessments and substantial investment in physical infrastructure. Environmental management plans and resettlement action plans will be developed for all Projects as necessary. The environmental and social benefits expected from the Compact include enhanced livelihoods, greater access to social services, and more sustainable agricultural practices, ultimately leading to reduced slash and burn agriculture and improved soil quality.

E. Donor Coordination

The $547 million Compact will place the U.S. among the top three donors to Ghana. As such, donor coordination is particularly important to ensure that MCC's investment is building upon and complementing the work of other donors.

There are significant complementarities between the program and current donor activity in Ghana. The Agriculture Project, for instance, will build upon activities pioneered by U.S. Agency for International Development's Trade and Investment Program for a Competitive Export Economy (TIPCEE), and those developed under the Agricultural Services Sub-Sector Investment Project supported by the World Bank, the UK's Department for International Development (DfID), African Development Bank, the International Fund for Agricultural Development and others. TIPCEE activities are expected to continue during the course of the Compact.

In implementing the Transportation Project, MCC is working alongside several other donors active in the sector, namely the World Bank, European Union, Danish International Development Agency and DfID to avoid duplication and to ensure policy coordination.

MCC is basing its investments under the Rural Services Project on an existing Community Based Rural Development Project (CBRDP) financed by the World Bank and Agence Francaise de Développement. The MCC investments will extend the services of the program implementation unit developed under the CBRDP and the capacity building activities financed in the project will use the existing training program piloted by CBRDP.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Ghana

Table of Contents

Article I. Purpose and Term
- Section 1.1 Compact Goal; Objectives
- Section 1.2 Projects
- Section 1.3 Entry into Force; Compact Term

Article II. Funding and Resources
- Section 2.1 MCC Funding
- Section 2.2 Government Resources
- Section 2.3 Limitations on the Use or Treatment of MCC Funding
- Section 2.4 Incorporation; Notice; Clarification
- Section 2.5 Refunds; Violation
- Section 2.6 Bilateral Agreement

Article III. Implementation
- Section 3.1 Implementation Framework
- Section 3.2 Government Responsibilities
- Section 3.3 Government Deliveries
- Section 3.4 Government Assurances
- Section 3.5 Implementation Letters; Supplemental Agreements
- Section 3.6 Procurement; Awards of Assistance
- Section 3.7 Policy Performance; Policy Reforms
- Section 3.8 Records and Information; Access; Audits; Reviews
- Section 3.9 Insurance; Performance Guarantees
- Section 3.10 Domestice Requirements
- Section 3.11 No Conflict
- Section 3.12 Reports

Article IV. Conditions Precedent; Deliveries
- Section 4.1 Conditions Prior to the Entry into Force and Deliveries
- Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements

Article V. Final Clauses
- Section 5.1 Communications
- Section 5.2 Representatives
- Section 5.3 Amendments
- Section 5.4 Termination; Suspension
- Section 5.5 Privileges and Immunities
- Section 5.6 Attachments

Section 5.7 Inconsistenecies
Section 5.8 Indemnification
Section 5.9 Headings
Section 5.10 Interpretation
Section 5.11 Signatures
Section 5.12 Designation
Section 5.13 Survival
Section 5.14 Consultation
Section 5.15 MCC Status
Section 5.16 Language
Section 5.17 Publicity; Information and Marking
Exhibit A: Definitions
Exhibit B: List of Certain Supplemental Agreements
Schedule 2.1(a)(iii): Compact Implementation Funding
Annex I: Program Description
Schedule 1: Agriculture Project
Schedule 2: Transportation Project
Schedule 3: Rural Development Project
Annex II: Summary of Multi-Year Financial Plan
Exhibit A: Multi-Year Financial Plan Summary
Annex III: Description of the M&E Plan

Millennium Challenge Compact

This Millennium Challenge Compact (the ''Compact'') is made between the United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''MCC'') and the Government of the Republic of Ghana (the ''Government'') (referred to herein individually as a ''Party'' and collectively, the ''Parties''). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected Ghana as eligible to present to MCC a proposal for the use of Millennium Challenge Account (''MCA'') assistance to help facilitate poverty reduction through economic growth in Ghana;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which final proposal was submitted to MCC on October 28, 2005 (the ''Proposal'');

Whereas, the Proposal focused on, among others, increasing farmer incomes through modernizing Ghana's agricultural sector, together with investments in developing transportation infrastructure and rural institutions, all designed to dismantle obstacles to realizing Ghana's agricultural potential as an engine of economic growth;

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes projects and related activities that will advance the progress of Ghana towards achieving poverty reduction through economic growth; and

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Ghana's progress towards poverty reduction through economic growth (the ''Program'');

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Compact Goal; Objectives

The goal of this Compact is poverty reduction through economic growth in Ghana (the ''Compact Goal''). The key to advancing the Compact Goal is the two-fold objective of the Program, first, to increase the production and productivity of high-value cash and food staple crops in the Intervention Zones in Ghana and, second, to enhance the competitiveness of Ghana's high-value cash and food crops in both local and international markets (collectively, the ''Program Objective''). The Parties have identified the following project-level objectives (each, a ''Project Objective'') of this Compact to advance the Program Objective, and thus the Compact Goal, each of which is described in more detail in the Annexes attached hereto:

(a) Enhance the profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farmers (the ''Agriculture Project Objective'');

(b) Reduce the transportation costs affecting agricultural commerce at sub-regional and regional levels (the ''Transportation Project Objective''); and

(c) Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agri-business development (the ''Rural Development Project Objective'').

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, the Compact Goal, Program Objective and Project Objectives during the Compact Term. The Program Objective and the individual Project Objectives are collectively referred to herein as ''Objectives'' and each individually as an ''Objective.''

Section 1.2 Projects

The Annexes attached hereto describe the specific projects, the policy reforms and other activities related thereto (each, a ''Project'') that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives and the Compact Goal.

Section 1.3 Entry into Force; Compact Term

This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Compact (including as set forth in Section 3.10) and that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (the ''Entry into Force''). This Compact shall remain in force for five (5) years from the Entry into Force, unless earlier terminated in accordance with Section 5.4 (the ''Compact Term'').

Article II. Funding and Resources

Section 2.1 MCC Funding

(a) *MCC's Contribution.* MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Five Hundred Forty Seven Million and Nine Thousand United States Dollars (US$ 547,009,000) (''MCC Funding'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2(b) and 5.4(b), the allocation of the MCC Funding within the Program and among and within the Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Budget for the Program, Project, Project Activity or sub-activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (A) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (B) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as

provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(iii) Notwithstanding any other provision of this Compact and pursuant to the authority of Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''Act''), upon the conclusion of this Compact (and without regard to the satisfaction of all of the conditions for Entry into Force required under Section 1.3), MCC shall make available Ten Million and Three Hundred Seventy One Thousand United States Dollars (US$ 10,371,000) (''Compact Implementation Funding'') to facilitate certain aspects of Compact implementation as described in Schedule 2.1(a)(iii) attached hereto; *provided*, such Compact Implementation Funding shall be subject to (A) the limitations on the use or treatment of MCC Funding set forth in Section 2.3, as if such provision were in full force and effect, and (B) any other requirements for, and limitations on the use of, such Compact Implementation Funding as may be required by MCC in writing; *provided*, *further*, that any Compact Implementation Funding granted in accordance with this Section 2.1(a)(iii) shall be included in, and not additional to, the total amount of MCC Funding; and *provided further*, any obligation to provide such Compact Implementation Funding shall expire upon the expiration or termination of this Compact or five (5) years from the conclusion of this Compact, whichever occurs sooner, and in accordance with Section 5.4(e). Notwithstanding anything to the contrary in this Compact, this Section 2.1(a)(iii) shall provisionally apply prior to Entry into Force.

(b) Disbursements.

(i) *Disbursements of MCC Funding.* MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''MCC Disbursement'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other Supplemental Agreement.

(ii) *Re-Disbursements of MCC Funding.* The release of MCC Funding from a Permitted Account (each such release, a ''Re-Disbursement'') shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other Supplemental Agreement.

(c) *Interest.* Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue (collectively, ''Accrued Interest'') shall be held in a Permitted Account and accrue in accordance with the requirements for the accrual and treatment of Accrued Interest as specified in Annex I or any Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) *Conversion; Exchange Rate.* The Government shall ensure that all MCC Funding that is held in any Permitted Account shall be denominated in the currency of the United States of America (''United States Dollars,'' ''US$'' or ''$'') prior to Re-Disbursement; *provided,* that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of the Ghana prior to Re-Disbursement in accordance with the requirements of Annex I and any Supplemental Agreement. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of Ghana for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) *Guidance.* From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2 Government Resources

(a) The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate effectively to carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other governmental authority of Ghana at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation in its respective budget of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reallocation or reduction. In the event that MCC independently determines, upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Budget for the activity for which funds were reduced or reallocated or (ii) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of Ghana on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding

(a) *Abortions and Involuntary Sterilizations.* The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3)), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable

to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) *United States Job Loss or Displacement of Production.* The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) *Military Assistance and Training.* The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) *Prohibition of Assistance Relating to Environmental, Health or Safety Hazards.* The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the ''Environmental Guidelines''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) *Taxes.* The Government shall ensure that the Program, any Program Assets, MCC Funding and Accrued Interest shall be free from any taxes imposed under the laws currently or hereafter in effect in Ghana during the Compact Term. This exemption shall apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each a ''Tax'' and collectively, ''Taxes''), including:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Ghana, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Ghana, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e), the term ''national'' refers to organizations established under the laws currently or hereafter in effect in Ghana, other than MiDA or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws currently or hereafter in effect in Ghana;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of Ghana and who are present in Ghana for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of Ghana, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied on the last transaction for the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes or other similar charges; for purposes of this Section 2.3(e)(i)(4), the term ''last transaction'' refers to the last transaction by which the goods or services were purchased for use in the activities funded by MCC Funding.

(ii) This Section 2.3(e) shall apply, but is not limited to (A) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (B) any supplies, equipment, materials, property or other goods (referred to collectively in this Section 2.3(e) as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, Ghana by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (C) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (D) any employee of such organizations (the uses set forth in clauses (A) through (D) are collectively referred to herein as ''Exempt Uses'').

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to an account designated by MCC the amount of such Tax in the currency of Ghana, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing of such levy and tax payment, in accordance with procedures agreed by the Parties, whether by MCC or otherwise; *provided, however,* the Government shall apply national funds to satisfy its obligations under this paragraph and no MCC Funding,

Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding (''Program Assets'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) At MCC's request, the Parties shall memorialize in a mutually acceptable Supplemental Agreement, Implementation Letter or other suitable document the mechanisms for implementing this Section 2.3(e), including (A) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (B) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in Section 2.3(e)(i)(2) above, (C) a requirement for the provision by the Government of a tax-exemption certificate which expressly includes, inter alia, the thirty (30) day refund requirement of Section 2.3(e)(iii) above, and (D) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(f) *Alteration.* The Government shall ensure that no MCC Funding, Accrued Interest or Program Assets shall be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in Ghana that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or Program Asset.

(g) *Liens or Encumbrances.* The Government shall ensure that no MCC Funding, Accrued Interest, or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a ''Lien''), except with the prior approval of MCC in accordance with Section 3(c) of Annex I, and in the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien and if required by final non-appealable order, shall pay any amounts owed to obtain such release; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.3(g) and no MCC Funding, Accrued Interest, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) *Other Limitations.* The Government shall ensure that the use or treatment of MCC Funding, Accrued Interest, and Program Assets shall be subject to and in conformity with such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) *Utilization of Goods, Services and Works.* The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) *Notification of Applicable Laws and Policies.* MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees and sub-grantees of any Provider. The term ''Provider'' shall mean (i) MiDA and any Government Affiliate or Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least US$ 50,000 in the aggregate of MCC Funding (other than employees of MiDA) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible. MCC shall use good faith efforts to respond timely to such notification for clarification.

Section 2.5 Refunds; Violation

(a) Notwithstanding the availability to MCC, or exercise by MCC, of any other remedies, including under international law, this Compact or any Supplemental Agreement:

(i) If any amount of MCC Funding, Accrued Interest or any other Program Asset is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may, upon written notice, require the Government to repay promptly to MCC to an account designated by MCC, or to others as MCC may direct, the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any other misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days after the Government is notified, whether by MCC or other duly authorized representative of the United States Government, of such prohibited use; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest, or any other Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund of, to such account designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; *provided,* that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further,* that any refund of MCC Funding or Accrued Interest shall

be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Section 2.6 Bilateral Agreement

All MCC Funding shall be considered United States assistance under the General Agreement for a Programme of Technical Co-operation by and between the Government of the United States of America and the Government, dated June 3, 1957, as amended from time to time (the ''Bilateral Agreement''). If there are conflicts or inconsistencies between any parts of this Compact and the Bilateral Agreement, as either may be amended from time to time, the provisions of this Compact shall prevail over those of the Bilateral Agreement.

Article III. Implementation

Section 3.1 Implementation Framework

This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in Ghana, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''Government Responsibilities''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration, or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a direct or indirect financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised directly or indirectly for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties) or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; *provided, however*, the Government may designate MiDA or, with the prior written consent of MCC, such other mutually acceptable persons or entities (each, a ''Permitted Designee'') to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties each in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement (referred to herein collectively as ''Designated Rights and Responsibilities''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, in accordance with this section 3.2(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee, including MiDA, in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MiDA is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision, and (ii) the authority of MiDA shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, the Governance Agreement, any other Governing Document or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and

other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries

The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all reports, notices, certificates, documents or other deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances

The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (A) alter in any material respect the information delivered, (B) likely have a material adverse effect on the Government's ability to implement effectively, or ensure the effective implementation of, the Program or any Project or otherwise to carry out its responsibilities or obligations under or in furtherance of this Compact, or (C) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties.

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the Government usually receives or budgets for the activities contemplated herein from external or domestic sources.

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound.

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in Ghana (subject to Section 2.3(e)) and consistent with the applicable requirement of the laws of Ghana or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''Implementation Letter''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designee or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a ''Supplemental Agreement''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance

(a) The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the ''Procurement Guidelines'') reflected in a Supplemental Agreement between the Government (and a mutually acceptable Government Affiliate or MiDA) and MCC (the ''Procurement Agreement''), which Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) The Government shall ensure that no goods, services or works may be funded in whole or in part (directly or indirectly) by MCC Funding which are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MiDA and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MiDA no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this section 3.6 into all Supplemental Agreements between the Government, any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

Section 3.7 Policy Performance; Policy Reforms

In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and

to improve its level of performance under the policy criteria identified in section 607 of the Act, and the MCA selection criteria and methodology published by MCC pursuant to section 607 of the Act from time to time (''MCA Eligibility Criteria'').

Section 3.8 Records and Information; Access; Audits; Reviews

(a) *Reports and Information.* The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to carry out effectively its obligations under this Compact, including under section 3.12.

(b) *Government Books and Records.* The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice (''Compact Records''). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Ghana. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any then pending litigation, claims or audit findings or any statutory requirements.

(c) *Access.* Upon the request of MCC, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) *Audits.*

(i) *Government Audits.* The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, or select or cause to be selected, an auditor named on the approved list of auditors in accordance with the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' (the ''Audit Guidelines'') issued by the Inspector General of the United States Agency for International Development (the ''Inspector General''), and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Audit Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Audit Guidelines. An audit shall be completed and delivered to MCC no later than ninety (90) days after the first period to be audited and no later than ninety (90) days after each anniversary of the Entry into Force thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) *Audits of U.S. Entities.* The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States non-profit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) *Audit Plan.* The Government shall submit, or cause to be submitted, to MCC no later than twenty (20) days prior to the date of its adoption a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCC, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first period to be audited (such plan, the ''Audit Plan'').

(iv) *Covered Provider.* A ''Covered Provider'' is (A) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$ 300,000 or more of MCC Funding in any MiDA fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$ 300,000 or more of MCC Funding from any Provider in such fiscal year or (B) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$ 500,000 or more of MCC Funding in any MiDA fiscal year or any other United States person or entity that receives, directly or indirectly, US$ 500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) *Corrective Actions.* The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's

audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) *Audit Reports.* The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than ninety (90) days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) *Other Providers.* For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) *Audit by MCC.* MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC Funding, regardless of the requirements of this Section 3.8.

(e) *Application to Providers.* The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a ''Government Party''), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) *Reviews or Evaluations.* The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental and social audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) *Cost of Audits, Reviews or Evaluations.* MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance; Performance Guarantees

The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets and shall obtain or cause to be obtained such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MiDA or the Implementing Entity, as applicable, shall be named as the payee on any such insurance and the beneficiary of any such guarantee, including performance bonds, to the extent permissible under applicable laws unless otherwise agreed by the Parties. MCC, and to the extent it is not named as the insured party, MiDA shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws unless otherwise agreed by the Parties. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services, works, or otherwise; *provided, however,* at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MiDA and acceptable to MCC or as otherwise directed by MCC. To the extent MiDA is held liable under any indemnification or other similar provision of any agreement between MiDA, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MiDA any such obligation; *provided, further,* the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 3.9.

Section 3.10 Domestic Requirements

The Government shall proceed in a timely manner to seek ratification of this Compact as necessary or required by the laws of Ghana, or similar domestic requirement, in order that (a) this Compact (and any Supplemental Agreement to which MCC is a party) shall be given the status of an international agreement, (b) no laws of Ghana (other than the Constitution of Ghana) now or hereafter in effect shall take precedence or prevail over this Compact (or any Supplemental Agreement to which MCC is a party) during the Compact Term (or a longer period to the extent provisions of this Compact remain in force following the expiration of the Compact Term pursuant to Section 5.13) and (c) each of the provisions of this Compact (and each of the provisions of any Supplemental Agreement to which MCC is a party) is valid, binding and in full force and effect under the laws of Ghana. The Government shall initiate such process promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to Entry into Force.

Section 3.11 No Conflict

The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports

The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry into Force (or such other anniversary agreed by the Parties in writing) and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and

(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by Ghana toward achieving the Compact Goal and Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping Ghana to achieve the Compact Goal and Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any Audit Plan, or any Implementation Document; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to the Entry into Force and Deliveries

As conditions precedent to the Entry Into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall excute a Disbursement Agreement, which agreement shall be in full force and effects as of the Entry into Force.

(b) The Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect as of the Entry into Force.

(c) The Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall execute a governance agreement (the ''Governance Agreement''), which agreement shall be in full force and effects as of the Entry into Force.

(d)(i) The Government shall deliver one or more of the Supplement Agreements or other documents identified on Exhibit B attached hereto, which agreements or other documents shall be fully executed by the parties thereto and in full force and effect, or (ii) the Government (or a mutually acceptable Government Affiliate), a Permitted Designee, and MCC shall execute one or more term sheets that set forth the material and principal terms and conditions that will be included in any such Supplemental Agreement or other documents that have not been entered into or effective as of the Entry into Force (the ''Supplemental Agreement Term Sheets'').

(e) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of the Government executing any document under this Compact, such written statement to be signed by a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(f) The Government shall deliver a certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, that:

(i) Certifies the Government has completed all of its domestic requirements in order that (1) this Compact (and any Supplemental Agreement to which MCC is a party) shall be given the status of an international agreement, (2) no laws of Ghana (other than the Constitution of Ghana) now or hereafter in effect shall take precedence or prevail over this Compact (or any Supplemental Agreement to which MCC is a party) during the Compact Term (or a longer period to the extent provisions of this Compact remain in force following the Compact Term pursuant to Section 5.13) and (3) each of the provisions of this Compact (and each of the provisions of any Supplemental Agreement to which MCC is a party) shall be valid, binding and in full force and effect under the laws of Ghana; and

(ii) Attaches thereto, and certifies that such attachments are, true, correct and complete copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 3.10 (including any requirements under section 96 of the Ghana Public Procurement Act, 2003 (Act 663) to cause the Procurement Guidelines (as defined in Section 3.6(a)) to apply to the transactions contemplated by this Compact, which MCC may post on its website or otherwise make publicly available.

(g) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative of MCC executing any document under this Compact such written statement to be signed by a duly authorized official of MCC other than the Principal Representative or any such Additional Representative.

(h) The Government has not engaged subsequent to the conclusion of this Compact in any action or omission inconsistent with the MCA Eligibility Criteria, as determined by MCC in its sole discretion.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements

Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications

Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be (a) in writing, (b) in English and (c) deemed duly given: (i) upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) three (3) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Phone: (202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President for Operations); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government:

Ministry of Public Sector Reform, Attention: Minister of Public Sector Reform, Private Mail Bag, Stadium Post Office, Accra, Ghana, Facsimile: (233–21) 670295, Phone: (233–21) 684086, E-mail: *nduom@africaonline.com.gh.*

With a copy to MiDA:

At an address, and to the attention of the person, to be designated in writing to MCC by the Government.

Notwithstanding the foregoing, any audit report delivered pursuant to

Section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives

Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, Minister of Public Sector Reform of Ghana, and MCC shall be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a ''Principal Representative''), each of whom, by written notice to the other Party, may designate one or more additional representatives (each, an ''Additional Representative'') for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 5.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the respective domestic approval requirements to which this Compact was subject.

Section 5.4 Termination; Suspension

(a) Subject to Section 2.5, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement between the Parties, subject to Section 2.5, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion, that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render Ghana ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 et seq.), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of Ghana on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document delivered in furtherance of the Compact or any Supplemental Agreement or any other evidence reveals that actual expenditures for the Program, any Project or any Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Budget or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (A) materially reallocates or reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, (B) fails to contribute or provide the amount, level, type and quality of resources required to carry out effectively the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact, or (C) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantee, sub-grantee, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied, directly or indirectly, to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (A) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or otherwise to carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (B) makes it improbable that the Objectives will be achieved during the Compact Term; (C) materially and adversely affects the Program Assets or any Permitted Account; or (D) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee of any of the foregoing;

(xi) The Government, any Permitted Designee or Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties; or

(xiii) Any MCC Funding, Accrued Interest or Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to obtain the release of such Lien (at its own expense and not with MCC Funding, Accrued Interest, or Program Assets) within thirty (30) days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this

Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this Section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Disbursements and Re-Disbursements shall cease upon expiration, suspension, or termination of this Compact; *provided*, *however*, (i) reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before such expiration, suspension or termination of this Compact and (ii) reasonable expenditures for goods and services (including certain administrative expenses) properly incurred within one hundred and twenty (120) days after such expiration, suspension or termination of the Compact in connection with the winding up of the Program may be paid from MCC Funding, *provided*, *further*, that, in cases described in clauses (i) and (ii), the request for such payment shall be (A) properly submitted within ninety (90) days after such expiration, suspension or termination of the Compact and (B) subject to the prior written consent of MCC.

(f) Other than the payments permitted pursuant to Section 5.4(e), in the event of the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, the Government, at MCC's sole discretion, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided*, for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a United States Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s), such value as determined by MCC.

(h) Prior to the expiration of this Compact or upon termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MiDA, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement or otherwise committed in accordance with Section 5.4(e), or (iii) any other matter related to the winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities

MCC is an agency of the Government of the United States of America and its personnel assigned to Ghana will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC so notified, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in Ghana, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service so notified, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in, Ghana.

Section 5.6 Attachments

Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''Attachments'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V, and

(ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any Implementation Document, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification

The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''MCC Indemnified Party'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (a) are directly or indirectly suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (b) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, MiDA or any Permitted Designee, directly or indirectly connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings

The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation

(a) Any reference to the term ''including'' in this Compact shall be

deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate, any Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) Defined terms importing the singular also include the plural, and vice versa.

Section 5.11 Signatures

A signature to this Compact or an amendment to this Compact pursuant to Section 5.3 shall be delivered only as an original signature. With respect to all other signatures, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Without limiting the foregoing, a signature on an audit report or a signature evidencing any modification identified in Sections 2(b) and (4)(a)(iv) of Annex I, Section 4 of Annex II or Section 5(c) Annex III shall be followed by an original in overnight express mail. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.12 Designation

MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties. MCC shall inform the Government of any such designation.

Section 5.13 Survival

Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for one hundred and twenty (120) days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation

Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (20) days from the commencement of the consultations, then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than forty five (45) days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner and by the principles of international law. Any dispute arising under or related to this Compact shall be determined exclusively through the consultation mechanism set forth in this Section 5.14.

Section 5.15 MCC Status

MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of Ghana or any other jurisdiction and all disputes arising under or relating to this Compact shall be determined in accordance with Section 5.14.

Section 5.16 Language

This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 5.17 Publicity; Information and Marking

The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the Web site operated by MiDA (''MiDA Web site''), identifying Program activity sites, and marking Program Assets; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MiDA Web site. MCC may post this Compact, and any amendments thereto, on the Web site of MCC. MCC shall have the right to use any information or data provided in any report or document provided to MCC for the purpose of satisfying MCC reporting requirements or in any other manner.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 1st day of August, 2006 and this Compact shall enter into force in accordance with Section 1.3.

Done at Washington, DC, in English.

For the United States of America, acting through the Millennium Challenge Corporation,

Name: John J. Danilovich,
Title: Chief Executive Officer.

For the Government of the Republic of Ghana,

Name: Dr. P. Kwesi Nduom,
Title: Minister of Public Sector Reform.

Exhibit A—Definitions

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the

definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A.

Accrued Interest shall have the meaning set forth in Section 2.1(c).

Act shall have the meaning set forth in Section 2.1(a)(iii).

Additional Representative shall have the meaning set forth in Section 5.2.

ADR shall have the meaning set forth in Section 2(c)(ii) of Schedule 1 to Annex I.

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Afram Basin Zone shall have the meaning set forth in Section 1(a) of Annex I.

Agriculture Project shall have the meaning set forth in the Preamble to Schedule 1 to Annex I.

Agriculture Project Objective shall have the meaning set forth in Section 1.1(a).

Attachments shall have the meaning set forth in Section 5.6.

Audit Guidelines shall have the meaning set forth in Section 3.8(d)(i).

Audit Plan shall have the meaning set forth in Section 3.8(d)(iii).

Auditor shall have the meaning set forth in Section 3(h) of Annex I.

Auditor/Reviewer Agreement shall have the meaning set forth in Section 3(h) of Annex I.

Bank(s) means any bank holding a Permitted Account.

Bank Agreement shall have the meaning set forth in Section 4(d) of Annex I.

Beneficiaries shall have the meaning set forth in Section 2(a) of Annex III.

Bilateral Agreement shall have the meaning set forth in Section 2.6.

Board shall have the meaning set forth in Section 3(d)(i)(2) of Annex I.

CEO shall have the meaning set forth in Section 3(d)(iii)(2) of Annex I.

Chair shall have the meaning set forth in Section 3(d)(ii)(2)(A)(i) of Annex I.

Civil Member shall have the meaning set forth in Section 3(d)(ii)(2)(A) of Annex I.

Civil Society Stakeholders shall have the meaning set forth in Section 3(e)(iv) of Annex I.

Commercial Training Activity shall have the meaning set forth in Section 2(a) of Schedule 1 to Annex I.

Community Services Activity shall have the meaning set forth in Section 2(b) of Schedule 3 to Annex I.

Compact shall have the meaning set forth in the Preamble.

Compact Goal shall have the meaning set forth in Section 1.1.

Compact Goal Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Compact Implementation Funding shall have the meaning set forth in Section 2.1(a)(iii).

Compact Records shall have the meaning set forth in Section 3.8(b).

Compact Reports shall have the meaning set forth in Section 3(d)(ii)(3)(C) of Annex I.

Compact Term shall have the meaning set forth in Section 1.3.

Covered Provider shall have the meaning set forth in Section 3.8(d)(iv).

Credit Activity shall have the meaning set forth in Section 2(e) of Schedule 1 to Annex I.

DACF shall have the meaning set forth in Section 2(b)(ii) of Schedule 3 to Annex I.

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.2(c).

Detailed Budget shall have the meaning set forth in Section 4(a)(ii) of Annex I.

DFID shall have the meaning set forth in Section 4 of Schedule 2 to Annex I.

DFR shall have the meaning set forth in Section 6 of Schedule 2 to Annex I.

Disbursement Agreement shall have the meaning set forth in the Preamble to Annex I.

DUR shall have the meaning set forth in Section 6 of Schedule 2 to Annex I.

EIA shall have the meaning set forth in Section 6(b) of Annex I.

EMP shall have the meaning set forth in Section 6(b) of Annex I.

eNGO Invitee shall have the meaning set forth in Section 3(d)(ii)(2)(F) of Annex I.

Entry into Force shall have the meaning set forth in Section 1.3.

Environmental Guidelines shall have the meaning set forth in Section 2.3(d).

EU shall have the meaning set forth in Section 1 of Schedule 1 to Annex I.

Evaluation Component shall have the meaning set forth in Section 1 of Annex III.

Exempt Uses shall have the meaning set forth in Section 2.3(e)(ii).

FBOs shall have the meaning set forth in Section 2 of Schedule 1 to Annex I.

Feeder Roads Activity shall have the meaning set forth in Section 2(f) of Schedule 1 to Annex I.

Ferry Activity shall have the meaning set forth in Section 2(c) of Schedule 2 to Annex I.

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Financial Plan Annex shall have the meaning set forth in the Preamble to Annex II.

Financial Services Activity shall have the meaning set forth in Section 2(c) of Schedule 3 to Annex I.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the meaning set forth in Section 3(g) of Annex I.

Fiscal Agent Agreement shall have the meaning set forth in Section 3(g) of Annex I.

GDP shall have the meaning set forth in Section 1(a) of Annex I.

GHA shall have the meaning set forth in Section 6 of Schedule 2 to Annex I.

Ghana means the Republic of Ghana.

Governance Agreement shall have the meaning set forth in Section 4.1(c).

Governing Document shall have the meaning set forth in Section 3(c)(i)(9) of Annex I.

Government shall have the meaning set forth in the Preamble.

Government Affiliate means an Affiliate, ministry, bureau, department, agency, government, corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Member shall have the meaning set forth in Section 3(d)(ii)(2)(A) of Annex I.

Government Party shall have the meaning set forth in Section 3.8(e)(i).

Government Responsibilities shall have the meaning set forth in Section 3.2(a).

GPRS shall have the meaning set forth in Section 1(a) of Annex I.

GRF shall have the meaning set forth in Section 6 of Schedule 2 to Annex I.

Implementation Document shall have the meaning set forth in Section 3(a) of Annex I.

Implementation Letter shall have the meaning set forth in Section 3.5(a).

Implementing Entity shall have the meaning set forth in Section 3(f) of Annex I.

Implementing Entity Agreement shall have the meaning set forth in Section 3(f) of Annex I.

Indicators shall have the meaning set forth in Section 2(a) of Annex III.

Inspector General shall have the meaning set forth in Section 3.8(d)(i).

Interim Evaluations shall have the meaning set forth in Section 3(b) of Annex III.

Intervention Zone shall have the meaning set forth in Section 1(a) of Annex I.

IPPC shall have the meaning set forth in Section 2(d) of Schedule 1 to Annex I.

Irrigation Activity shall have the meaning set forth in Section 2(b) of Schedule 1 to Annex I.

Land Activity shall have the meaning set forth in Section 2(c) of Schedule 1 to Annex I.

LAP shall have the meaning set forth in Section 2(c) of Schedule 1 to Annex I.

Lien shall have the meaning set forth in Section 2.3(g).

Local Account shall have the meaning set forth in Section 4(d)(ii) of Annex I.

M&E shall have the meaning set forth in Section 3 of Annex I.

M&E Annex shall have the meaning set forth in the Preamble to Annex III.

M&E Plan shall have the meaning set forth in Section 2(e) of Annex I.

Management shall have the meaning set forth in Section 3(d)(i)(2) of Annex I.

Material Agreement shall have the meaning set forth in Section 3(c)(i)(4) of Annex I.

Material Re-Disbursement shall have the meaning set forth in Section 3(c)(i)(7) of Annex I.

MCA shall have the meaning set forth in the Recitals.

MCA Eligibility Criteria shall have the meaning set forth in Section 3.7.

MCC shall have the meaning set forth in the Preamble.

MCC Disbursement shall have the meaning set forth in Section 2.1(b)(i).

MCC Disbursement Request shall have the meaning set forth in Section 4(b) of Annex I.

MCC Funding shall have the meaning set forth in Section 2.1(a).

MCC Indemnified Party shall have the meaning set forth in Section 5.8.

MCC Representative shall have the meaning set forth in Section 3(d)(ii)(2)(B)(i) of Annex I.

MiDA shall have the meaning set forth the Preamble to Annex I.

MiDA Web site shall have the meaning set forth in Section 5.17.

MOFA shall have the meaning set forth in Section 2(a)(i) of Schedule 1 to Annex I.

Monitoring Component shall have the meaning set forth in Section 1 of Annex III.

MoT shall have the meaning set forth in Section 6 of Schedule 2 to Annex I.

Multi-Year Financial Plan shall have the meaning set forth in Section 4(a)(i) of Annex I.

Multi-Year Financial Plan Summary shall have the meaning set forth in Section 1 to Annex II.

N1 Activity shall have the meaning set forth in Section 2(a) of Schedule 2 to Annex I.

N1 Highway shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

NGOs shall have the meaning set forth in Section 1(b) of Annex I.

Northern Zone shall have the meaning set forth in Section 1(a) of Annex I.

Objective(s) shall have the meaning set forth in Section 1.1.

Objective Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Observer shall have the meaning set forth in Section 3(d)(ii)(2)(B) of Annex I.

Officer shall have the meaning set forth in Section 3(d)(iii)(1) of Annex I.

Outcome shall have the meaning set forth in Section 2(a) of Annex III.

Outcome Indicator shall have the meaning set forth in Section 2(a) of Annex III.

Party or Parties shall have the meaning set forth in the Preamble.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.2(c).

Pledge shall have the meaning set forth in Section 3(c)(i)(8) of Annex I.

Post-Harvest Activity shall have the meaning set forth in Section 2(d) of Schedule 1 to Annex I.

PPB shall have the meaning set forth in Section 4 of Schedule 3 to Annex I.

PRDs shall have the meaning set forth in Section 2(c)(ii) of Schedule 1 to Annex I.

Principal Representative shall have the meaning set forth in Section 5.2.

Procurement Agent shall have the meaning set forth in Section 3(i) of Annex I.

Procurement Agent Agreement shall have the meaning set forth in Section 3(i) of Annex I.

Procurement Agreement shall have the meaning set forth in Section 3.6(a).

Procurement Capacity Activity shall have the meaning set forth in Section 2(a) of Schedule 3 to Annex I.

Procurement Guidelines shall have the meaning set forth in Section 3.6(a).

Procurement Plan shall have the meaning set forth in Section 3(i) of Annex I.

Program shall have the meaning set forth in the Recitals.

Program Annex shall have the meaning set forth in the Preamble to Annex I.

Program Assets shall have the meaning set forth in Section 2.3(e)(iii).

Program Objective shall have the meaning set forth in Section 1.1.

Project shall have the meaning set forth in Section 1.2.

Project Activity shall have the meaning set forth in Section 2(b) of Annex I.

Project Objective shall have the meaning set forth in Section 1.1.

Proposal shall have the meaning set forth in the Recitals.

Provider shall have the meaning set forth in Section 2.4(b).

RAP shall have the meaning set forth in Section 6(b) of Annex I.

Re-Disbursement shall have the meaning set forth in Section 2.1(b)(ii).

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

RICU shall have the meaning set forth in Section 2(b)(i) of Schedule 3 to Annex I.

RSDP shall have the meaning set forth in Section 1 of Schedule 2 to Annex I.

Rural Development Project shall have the meaning set forth in the Preamble to Schedule 3 to Annex I.

Rural Development Project Objective shall have the meaning set forth in Section 1.1(c).

SEA shall have the meaning set forth in Section 6(a) of Annex I.

SMEs shall have the meaning set forth in Section 2(a)(ii) of Schedule 1 of Annex I.

Southern Zone shall have the meaning set forth in Section 1(a) of Annex I.

Special Account shall have the meaning set forth in Section 4(d)(i) of Annex I.

Supplemental Agreement shall have the meaning set forth in Section 3.5(b).

Supplemental Agreement between the Parties means any agreement between MCC on the one hand, and the Government, any Government Affiliate or Permitted Designee on the other hand.

Supplemental Agreement Term Sheets shall have the meaning set forth in Section 4.1(d).

Target shall have the meaning set forth in Section 2(a) of Annex III.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

TIPCEE shall have the meaning set forth in Section 5 of Schedule 1 to Annex I.

TQM shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

Transportation Project shall have the meaning set forth in the Preamble to Schedule 2 to Annex I.

Transportation Project Objective shall have the meaning set forth in Section 1.1(b).

Trunk Roads Activity shall have the meaning set forth in Section 2(b) of Schedule 2 to Annex I.

United States Dollars, US$ or $ shall have the meaning set forth in Section 2.1(d).

United States Government means any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

USAID shall have the meaning set forth in Section 5 of Schedule 1 to Annex I.

VLTC shall have the meaning set forth in Section 2 of Schedule 2 to Annex I.

Work Plan shall have the meaning set forth in Section 3(a) of Annex I.

Zonal Advisory Committee shall have the meaning set forth in Section 3(e)(i) of Annex I.

Exhibit B—List of Certain Supplemental Agreements

1. Fiscal Agent Agreement.
2. Procurement Agent Agreement.
3. Bank Agreement.
4. Implementing Entity Agreement.

Schedule 2.1(a)(iii)—Compact Implementation Funding

The Compact Implementation Funding provided pursuant to Section 2.1(a)(iii) of this Compact shall support the following activities:

(a) Three strategic environmental assessments, one for each Intervention Zone in connection with the requirements of Section 6 of Annex I.

(b) Development or refinement of FBO and staple food and horticulture crop curriculum (including production of materials) and related training and certification of MOFA and private sector extension agents, training in set-up and launching of effective technology demonstrations, and related international tours, all in connection with the Commercial Training Activity under Section 2(a) of Schedule 1 of Annex I.

(c) Community sensitization and information gathering, inventorying of land rights, and production of composite maps of community boundaries and parcels in the rural areas of Awutu Efutu Senya to pre-test the first steps in the pilot land registration activity, accompanied by a gender consultant to provide guidance on gender issues and women's participation, and coordinated by a supervisory consultant, in connection with the Land Activity under Section 2(c) of Schedule 1 of Annex I.

(d) A feasibility study; and an EIA, an EMP and a RAP, each as may be necessary, and design, in connection with the Feeder Roads Activity under Section 2(f)(ii)(1) of Schedule 1 of Annex I.

(e) A feasibility study; and an EIA, an EMP and a RAP, each as may be necessary, and design, in connection with the N1 Activity under Section 2(a)(ii)(1) of Schedule 2 of Annex I.

(f) A feasibility study; and an EIA, an EMP and a RAP, each as may be necessary, and design, in connection with the Trunk Roads Activity under Section 2(b)(ii)(2) of Schedule 2 of Annex I.

(g) A feasibility study; and an EIA, an EMP and a RAP, each as may be necessary, and design, in connection with the Ferry Activity under Section 2(c)(vii)(1) of Schedule 2 of Annex I.

(h) Start-up costs such as staff salaries and administrative support expenses of MiDA (or mutually acceptable Government Affiliate) such as rent, computers and other information technology or capital equipment.

The total amount of funds disbursed in accordance with Section 2.1(a)(iii) shall not exceed the amount set forth in Section 2.1(a)(iii).

Annex I—Program Description

This Annex I to the Compact (the ''Program Annex'') generally describes the Program that MCC Funding will support in Ghana during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and Millennium Development Authority (''MiDA'') shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties and (iii) is signed by the Principal Representative of each Party (or in the case of a Government Affiliate, the principal representative of such Government Affiliate) and of MiDA (the ''Disbursement Agreement'').

Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Each capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

1. Background and Ghana Development Strategy; Consultative Process

(a) Background; Ghana Development Strategy. Bordering the Gulf of Guinea and located between Côte d'Ivoire and Togo, Ghana is a West African country of 22 million people. Approximately a third of its population lives in poverty. Its gross domestic product (''GDP'') is growing at about 6% per year. Ghana's agricultural sector, the backbone of its economy, plays an important role in the socio-economic development of the country by ensuring food security for its people, providing raw material for local industries and offering employment and income for a large portion of its population.

In 2003, the Government developed, through a broad consultative process, the Ghana Poverty Reduction Strategy (the ''GPRS''), a comprehensive development policy framework to support poverty reduction in Ghana over a three-year period from 2003 to 2005. The GPRS identified, as one of the key strategies for poverty reduction, increasing the production from, and employment in, the agricultural sector. Specifically, the strategy entailed, among others, modernizing the agricultural practices so as to increase the production of staple crops and to encourage additional agro-processing and value-added production of high-value agricultural crops, while at the same time reforming the land acquisition process. The GPRS indicated that such modernization efforts should be supported by developing both transportation and social infrastructure targeted on certain areas of the country in order to ensure the enhanced delivery of educational, health and other social services to such areas.

Consistent with the aims of the GPRS, the Program consists of a series of strategic investments in an effort to modernize Ghana's agricultural sector, together with investments in developing transportation infrastructure and rural institutions in the following three areas of the country (each, an ''Intervention Zone''): [1]

- The Northern area consisting of the following five districts: Savelugu Nanton, Tolon Kumbungu, Tamale, West Mamprusi and Karaga (the ''Northern Zone'');
- The Afram Basin area consisting of the following six districts: Ejura Sekyedumasi, Kwahu South, Fanteakwa, Afram Plains, Sekyere East and Sekyere West (the ''Afram Basin Zone''); and
- The Southern Horticultural Belt area consisting of the following twelve districts: Gomoa, Awutu Efutu Senya, Akuapim South, Manya Krobo, Dangme West, Yilo Krobo, North Dayi, Hohoe, Ketu, Keta, South Tongu and Akatsi (the ''Southern Zone'').

[1] Some of the N1 Activity will take place in the district of Ga West.

(b) *Consultative Process.* In order to develop the Proposal, beginning in 2004, the Government held a series of consultations with various stakeholders at both the national and local levels, in which numerous policymakers, farmers, FBOs, exporters, industry associations, environmental organizations, gender organizations, the media, and other civil society groups participated. The objective of the consultations was the selection, as well as the prioritization, of the proposed interventions under the MCA assistance that are consistent with the GPRS and complement existing donor-supported and government-funded programs for poverty reduction in Ghana.

These consultations revealed that the proposed interventions should primarily target the agricultural sector, with a special focus on the production of high-value crops for exports. Subsequently, the Government formed a team of managers and sector experts to develop further the details of the proposed interventions.

As the proposed interventions became better defined, additional consultations with the stakeholders were held in each district within each Intervention Zone to discuss the exact type of the interventions, their locations, the arrangements for their implementations as well as the ownership structure for certain infrastructure resulting from the interventions. The non-governmental organizations (''NGOs'') representing the environmental and social sector participated in the early rounds of these additional consultations and influenced the design of the interventions eventually included in the Proposal. During MCC's due diligence of the Proposal, the Government made additional efforts to consult the various NGOs representing the environment and social sector as well as the farmers and FBOs. MCC observed the consultations both at the local level and the national level. This consultative process is still ongoing, and is expected to continue through the Compact Term.

2. Overview

(a) *Program Objective.* The Program consists of a series of specific and complementary Projects that the Parties expect will achieve the two-fold Program Objective, thus advancing the Compact Goal. Specifically, the two-fold Program Objective is, first, to increase the production and productivity of high-value cash and food staple crops in the three Intervention Zones and, second, to enhance the competitiveness of Ghana's agricultural products in both regional and international markets. To this end, the Program aims to strengthen the contribution of other agricultural sub-sectors to the growth of the economy and to reduce, through diversification, risks of not achieving consistently strong agricultural performance. As such, the Program Objective is fully consistent with, and directly supports, the GPRS.

(b) *Projects.* The Parties have identified the Projects that the Government will implement, or cause to be implemented, using MCC Funding to advance each Project Objective. Each Project is described in the Schedules to this Program Annex. The Schedules to this Program Annex also identify one or more of the activities that will be undertaken in furtherance of each Project (each, a ''Project Activity'') as well as the various activities within each Project Activity. Notwithstanding anything to the contrary in this Compact, the Parties may agree to modify, amend, terminate or suspend these Projects or to create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; *provided, however,* any such modification or amendment of a Project or creation of a new project is (i) consistent with the Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term.

(c) *Beneficiaries.* The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex and Annex III to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of implementation of the Program. The Government shall provide to MCC information on the population of the areas in which the Projects will be active, disaggregated by gender, income level and age. The Parties shall agree upon the description of the intended beneficiaries and the Parties will make publicly available a more detailed description of the intended beneficiaries of the Program, including publishing such description on the MiDA Web site.

(d) *Civil Society.* Civil society shall participate in overseeing the implementation of the Program through its representation on the Board and the three Zonal Advisory Committees (which will include representatives from NGOs and private sector entities), as provided in Section 3(d) and Section 3(e), respectively, of this Program Annex. In addition, ongoing consultations with the civil society regarding the manner in which each Project is being implemented will take place throughout the Compact Term.

(e) *Monitoring and Evaluation.* Annex III of this Compact generally describes the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives (the ''M&E Plan''). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued disbursement of MCC Funding under this Compact (whether as MCC Disbursements and Re-Disbursements) shall be contingent, among others, on successful achievement of certain targets as set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation (''M&E'') and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, and as may otherwise be agreed in writing by the Parties.

(a) *General.* The elements of the implementation framework will be further described in the relevant Supplemental Agreements and in a set of detailed documents for the implementation of the Program, consisting of (i) a Multi-Year Financial Plan, (ii) a Fiscal Accountability Plan, (iii) a Procurement Plan, (iv) an M&E Plan and (v) a Work Plan (each, an ''Implementation Document''). MiDA shall adopt each Implementation Document in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MiDA may amend any Implementation Document without amending this Compact, provided that any material amendment of such Implementation Document has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement. By such time as may be specified in the Disbursement Agreement, or as may otherwise be agreed by the Parties from time to time, MiDA shall adopt a work plan for the overall administration of the Program (the ''Work Plan''). The Work Plan shall set forth, with respect to (i) the administration of the Program, (ii) the monitoring and evaluation of the Program, and (iii) the implementation of each Project: (1) Each activity to be undertaken or funded by MCC Funding

(to the level of detail mutually acceptable to MiDA and MCC), (2) the Detailed Budget, and (3) where appropriate, the allocation of roles and responsibilities for specific activities, other programmatic guidelines, performance requirements, targets, and other expectations related thereto.

(b) Government.

(i) The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities and other obligations or responsibilities of the Government under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions or procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, to designate any rights or responsibilities to any Permitted Designee, and to establish MiDA, which shall be a Permitted Designee and shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government. The Government shall promptly deliver to MCC certified copies of any documents, orders, decrees, laws or regulations evidencing such legal, legislative, regulatory, procedural, contractual or other actions.

(ii) The Government shall ensure that MiDA is duly authorized and organized, sufficiently staffed and empowered to carry out fully the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MiDA shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and as provided in any Governing Documents; *provided, however,* the Government or another Permitted Designee may, subject to MCC approval, carry out any of the roles and responsibilities designated to be carried out by MiDA and described in Section 3(d) of this Program Annex or elsewhere in this Program Annex, any Governing Document or any other Supplemental Agreement prior to and during the initial period of the establishment and staffing and operational formation of MiDA, but in no event longer than the earlier of (1) the formation and convening of organizational meetings of the Board and the formation and operational establishment of MiDA (including the selection and engagement of Officers and other key employees) and (2) three months from the Entry into Force, unless otherwise agreed by the Parties in writing.

(c) MCC.

(i) Notwithstanding Section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) Each Implementation Document (including each component thereto) and any material amendments and supplements thereto;

(3) Any Audit Plan;

(4) Agreements (i) between the Government and MiDA, (ii) between the Government, a Government Affiliate, MiDA or any other Permitted Designee, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Procurement Agreement, any Governing Document, or any other Supplemental Agreement or (iii) in which the Government, a Government Affiliate, MiDA or any other Permitted Designee appoints, hires, or engages any of the following in furtherance of this Compact:

(A) Auditor;

(B) Reviewer;

(C) Fiscal Agent;

(D) Procurement Agent;

(E) Bank;

(F) Implementing Entity; and

(G) A member of the Board (including any Observer), any Officer or any other key employee of MiDA (including agreements involving the terms of any compensation for any such person). (Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(4) of this Program Annex and any amendments and supplements thereto, each, a ''Material Agreement'');

(5) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(6) Any agreement that is (A) not at arm's length or (B) with a party related to the Government, MiDA or any of their respective Affiliates;

(7) Any Re-Disbursement (each, a ''Material Re-Disbursement'') that requires such MCC approval under applicable law, any Governing Document, or any other Supplemental Agreement;

(8) Any pledge of any MCC Funding or any Program Assets, or any guarantee, directly or indirectly, of any indebtedness (each, a ''Pledge'');

(9) Any decree, legislation, regulation, contractual arrangement (including the Governance Agreement and the Millennium Development Authority Act of 2006 (Act 702)), or other charter document establishing or governing MiDA (each, a ''Governing Document'');

(10) Any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of (A) MiDA, including any revocation or modification of or supplement to any Governing Document related thereto, or (B) any subsidiary or Affiliate of MiDA;

(11) Any change in character or location of any Permitted Account;

(12) Formation or acquisition of any direct or indirect subsidiary, or other Affiliate, of MiDA;

(13)(A) Any change of any member of the Board (including any Observer), of the member serving as the Chair or in the composition or size of the Board, and the filling of any vacant seat of any member of the Board (including any Observer), (B) any change of any Officer or other key employee of MiDA or in the composition or size of the Management, and the filling of any vacant position of any Officer or other key employee of MiDA, and (C) any material change in the composition or size of any Zonal Advisory Committee;

(14) Any decision by MiDA to engage, to accept or to manage any funds from any donor agencies or organizations in addition to MCC Funding during the Compact Term;

(15) Any decision to amend, supplement, replace, terminate, or otherwise change any of the foregoing; and

(16) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, any Governing Document, the Procurement Agreement, the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) of this Program Annex in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Board. MCC retains the right to revoke its approval of any matter, agreement, or action if MCC concludes, in its sole discretion, that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government, any Government Affiliate, MiDA or any other Permitted Designee. Notwithstanding any provision in this Compact or any Supplemental Agreement to the contrary, the exercise by MCC of its approval rights under this Compact or any Supplemental Agreement shall not (1) diminish or

otherwise affect the Government Responsibilities or any other obligations or responsibilities of the Government under this Compact or any Supplemental Agreement, (2) transfer any such obligations or responsibilities of the Government, or (3) otherwise subject MCC to any liability.

(d) MiDA.

(i) *General.* Unless otherwise agreed by the Parties in writing, MiDA shall, as a Permitted Designee, be responsible for the oversight and management of the implementation of this Compact. MiDA shall be governed by applicable law and the Governing Documents, each such Governing Document to be in form and substance satisfactory to MCC and effective on or before the time specified in the Disbursement Agreement, and based on the following principles:

(1) The Government shall ensure that MiDA shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MiDA shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC.

(2) Unless otherwise agreed by the Parties in writing, MiDA shall consist of (A) an independent board of directors (the ''Board'') to oversee MiDA's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (B) a management unit (the ''Management'') to have overall management responsibility for the implementation of this Compact.

(ii) Board.

(1) *Formation.* The Government shall ensure that the Board shall be formed, constituted, governed and operated in accordance with the terms and conditions set forth in the Governing Documents and any Supplemental Agreement.

(2) *Composition.* Unless otherwise agreed by the Parties in writing, the Board shall consist of at least nine (9) but no more than eleven (11) voting members and four (4) non-voting observers identified below.

(A) The Board shall initially be composed of nine (9) voting members as follows, *provided* that the members identified in subsections (i)–(vi) below (each, a ''Government Member,'' and each of the other voting members, a ''Civil Member'') may be replaced by another government official from a ministry or other government body relevant to the Program activities pursuant to the Governing Documents, subject to approval by MCC (such replacement to be referred to thereafter as a Government Member):

(i) Dr. P. Kwesi Nduom, the incumbent Minister of the Ministry of Public Sector Reform, appointed as the chair (''Chair'') as provided in the Governing Documents;

(ii) The Minister, or any other government official of the rank of director or higher, from the Ministry of Food and Agriculture, initially to be the Minister of Food and Agriculture;

(iii) The Minister, or any other official of the rank of director or higher, from the Ministry of Trade, Industry, Private Sector and Presidential Special Initiatives, initially to be the Minister of Trade, Industry, Private Sector and Presidential Special Initiatives;

(iv) The Minister, or any other official of the rank of director or higher, from the Ministry of Local Government, Rural Development and Environment, initially to be the Minister of Local Government, Rural Development and Environment;

(v) The Minister, or any other official of the rank of director or higher, from the Ministry of Finance and Economic Planning, initially to be the Minister of Finance and Economic Planning;

(vi) The CEO;

(vii) Two representatives, each selected by the Private Enterprise Foundation; and (viii) A representative, selected by the Ghana Association of Private Voluntary Organizations in Development.

(B) The non-voting observers of the Board (each, an ''Observer'') shall be:

(i) A representative designated by MCC (the ''MCC Representative''); and

(ii) Three representatives, each selected by lot by the district assemblies within each Intervention Zone.

(C) Each Government Member position (other than the Chair) shall be filled by the individual, during the Compact Term, holding the office identified and all Government Members (including the Chair) shall serve in their capacity as the applicable Government officials and not in their personal capacity.

(D) The voting members identified in Section 3(d)(ii)(2)(A) of this Program Annex, by majority vote, may alter the size of the Board in accordance with the Governing Documents so long as the total does not exceed eleven (11) members.

(E) Each Observer shall have rights to attend all meetings of the Board, participate in the discussions of the Board, and receive all information and documents provided to the Board, together with any other rights of access to records, employees or facilities as would be granted to a member of the Board under the Governing Documents.

(F) The Board shall, pursuant to the Governing Documents, invite a representative selected by the registered NGOs representing the environmental community (the ''eNGO Invitee'') to all meetings of the Board, and the eNGO Invitee shall receive all information and documents provided to the Board as more specifically provided in the Governance Agreement.

(G) The voting members identified in Section 3(d)(ii)(2)(A) of this Program Annex shall exercise their duties solely in accordance with the best interests of MiDA, the Program and the Objectives, and shall not undertake any action that is contrary to those interests or would result in personal gain or a conflict of interest.

(3) Roles and Responsibilities.

(A) The Board shall oversee the Management, the overall implementation of the Program, and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken and certain agreements, documents or instruments executed and delivered, as the case may be, by MiDA only upon the approval and authorization of the Board as provided under applicable law or as set forth in any Governing Document, including each MCC Disbursement Request, selection or termination of certain Providers and any Implementation Document.

(C) The Chair, unless otherwise provided in the applicable Governing Documents, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the ''Compact Reports'') or any other documents or reports from time to time delivered to MCC by MiDA (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, correct and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities that the Government may designate to MiDA, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex, elsewhere in this Compact or any Supplemental Agreement, the Board shall have the exclusive authority as between the Board and the Management for all actions defined for the Board in any Governing Document and which are expressly designated therein as responsibilities that cannot be delegated further.

(4) *Indemnification of Civil Members, Observers, and Officers.* The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained

and appropriate indemnifications and other protections are provided, acceptable to MCC and to the fullest extent permitted under the laws of Ghana, to ensure that (A) Civil Members and Observers shall not be held personally liable for the actions or omissions of the Board or MiDA and (B) Officers shall not be held personally liable for the actions or omissions of the Board, MiDA or actions or omissions of the Officer so long as properly within the scope of Officer's authority. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and MiDA shall hold harmless the MCC Representative for any liability or action arising out of the MCC Representative's role as an Observer on the Board. The Government hereby waives and releases all claims related to any such liability and acknowledges that the MCC Representative has no fiduciary duty to MiDA. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or any other body of Ghana. MiDA shall provide a written waiver and acknowledgement that no fiduciary duty to MiDA is owed by the MCC Representative.

(iii) *Management.* Unless otherwise agreed in writing by the Parties, the Management shall report, through the CEO or other Officer as designated in any Governing Document, directly to the Board and shall have the composition, roles and responsibilities described below and set forth more particularly in the Governing Documents.

(1) *Composition.* The Government shall ensure that the Management shall be composed of qualified experts from the public or private sectors, including such offices and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in the Governing Documents, and from time to time in any Supplemental Agreement between the Parties, including without limitation the following: (A) CEO; (B) Internal Auditor; (C) Legal Counsel; (D) Director of the Agricultural Transformation Program; (E) Director of Procurement; (F) Director of Monitoring and Evaluation; (G) Director of Finance and Administration; (H) Director of Environmental and Social Impact; and (I) Director of Community and Public Outreach. The Management shall also include: (J) Commercialization of Agriculture Project Manager, (K) Community Services Project Manager, (L) Transportation and Agricultural Infrastructure Project Manager, and (M) Land Administration Project Manager, each of whom shall report to the Director of Agricultural Transformation Program and (N) Agricultural Financial Services and Bank Capacity Building Manager, who shall report to the Commercialization of Agriculture Project Manager. Each person holding the position in any of the sub-clauses (A) through (N), and such other offices as may be created and designated in accordance with any Governing Document and any Supplemental Agreement, shall be referred to as an ''Officer.'' The Management shall be supported by appropriate administrative and support personnel consistent with the Detailed Budget for Program administration and any Implementation Document.

(2) *Appointment of Officers.* The Chief Executive Officer (''CEO'') of MiDA shall be selected after an open and competitive recruitment and selection process, and appointed in accordance with the Governing Documents, which appointment shall be subject to MCC approval. Such appointment shall be further evidenced by such document as the Parties may agree. Unless otherwise specified in the Governing Documents, the Officers of MiDA other than the CEO shall be selected and hired by the Board after an open and competitive recruitment and selection process, and appointed in accordance with the Governing Documents, which appointment shall be subject to MCC approval. Such appointment shall be further evidenced by such document as the Parties may agree.

(3) *Roles and Responsibilities.*

(A) Management shall assist the Board in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Board and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any Supplemental Agreement) for the overall management of the implementation of the Program.

(B) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate to MiDA, Management shall develop each Implementation Document, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, ensure compliance with the Fiscal Accountability Plan, and such other responsibilities as set out in the Governing Documents or otherwise delegated to Management by the Board from time to time.

(C) Appropriate Officers as designated in the Governing Documents shall have the authority to contract on behalf of MiDA under any procurement undertaken in accordance with the Procurement Agreement (including the Procurement Guidelines) in furtherance of the Program.

(D) Management shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, MCC Disbursement Requests, Compact Reports, certain human resources decisions and certain other actions, as provided in the Governing Documents.

(e) *Zonal Advisory Committees.*

(i) *Formation.* The Government shall ensure the establishment of three (3) zonal advisory committees with governmental representatives (each, a ''Zonal Advisory Committee''), each representing one of the three Intervention Zones.

(ii) *Composition.* Each Zonal Advisory Committee shall be comprised, unless otherwise agreed by the Parties, of the following members: (A) A district planning officer from each district within the applicable Intervention Zone; (B) a district director of agriculture from each district within the applicable Intervention Zone; (C) a district chief executive from each district within the applicable Intervention Zone; (D) an elected representative from each district assembly from the applicable Intervention Zone; and (E) a regional environmental officer from each region within the applicable Intervention Zone. The Government shall take all actions necessary and appropriate to ensure that each Zonal Advisory Committee is established consistent with this Section 3(e) of this Program Annex and as otherwise specified in the Governing Documents or otherwise agreed in writing by the Parties. The composition of each Zonal Advisory Committee may be adjusted by agreement of the Parties from time to time to ensure, among others, an adequate representation of the intended beneficiaries of the Program. Each member position identified in this Section 3(e)(ii) of this Program Annex shall be filled by the individual, during the Compact Term, holding the office identified and such individual shall serve in his capacity as the applicable Government official and not in his personal capacity. In the event that such member is unable to participate in a meeting of the respective Zonal Advisory Committee, such member's deputy may participate in the member's stead.

(iii) *Roles and Responsibilities.* Each Zonal Advisory Committee shall be a mechanism to provide representatives of the private sector, civil society and local and regional governments the

opportunity to provide advice and input to MiDA regarding the implementation of the Compact. At the request of each Zonal Advisory Committee, MiDA shall provide such information and documents as it deems advisable, subject to appropriate treatment of such information and documents by the members of each Zonal Advisory Committee. Specifically, during each meeting of each Zonal Advisory Committee, MiDA shall present an update on the implementation of this Compact and progress towards achievement of the Objectives. Each Zonal Advisory Committee shall have an opportunity to provide regularly to MiDA its views or recommendations on the performance and progress on the Projects and Project Activities, any Implementation Document, procurement, financial management or such other issues as may be presented from time to time to each Zonal Advisory Committee or as otherwise raised by each Zonal Advisory Committee.

(iv) *Meetings.* Each Zonal Advisory Committee shall hold at least two meetings per year as well as such other periodic meetings of the Zonal Advisory Committee or the respective subcommittees thereof, designated along sectoral, regional, or other lines, as may be necessary or appropriate from time to time. Representatives of the FBOs, banking organizations, microfinance institutions, farmer associations, horticultural product associations, women's associations, chambers of commerce, anti-corruption associations, environmental and social organizations (''Civil Society Stakeholders''), among others, shall be provided timely advance notice of all such meetings, invited to participate in all such meetings and afforded an opportunity during each such meeting to present their views or recommendations to the Zonal Advisory Committee.

(v) *Accessibility; Transparency.* The members of each Zonal Advisory Committee shall be accessible to the beneficiaries they represent to receive the beneficiaries' comments or suggestions regarding the Program. The notices for, and the minutes (including the views or recommendations of the Civil Society Stakeholders expressed) of all meetings of, each Zonal Advisory Committee and any respective subcommittees shall be made public on the MiDA Web site or otherwise (including television, radio and print) in a timely manner.

(f) *Implementing Entities.* Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MiDA may provide MCC Funding, directly or indirectly through MiDA, to one or more (i) pre-determined ministries, bureaus or agencies of the Government based on their sector expertise or (ii) government bodies, businesses, NGOs, vendors or contractors, selected according to the Procurement Guidelines, to implement and carry out any Project, Project Activity (or a component thereof), or any other activities to be carried out in furtherance of this Compact (each, an ''Implementing Entity''). The Government shall ensure that MiDA enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions (including the payment of the Implementing Entity, if any) (the ''Implementing Entity Agreement''). An Implementing Entity shall report directly to the relevant Officer, as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties.

(g) *Fiscal Agent.* The Government shall ensure that MiDA engages one fiscal agent following an international competitive process (a ''Fiscal Agent'') who shall be responsible for, among others: (i) Assisting MiDA in preparing the Fiscal Accountability Plan; (ii) ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement and other relevant Supplemental Agreements; (iii) Re-Disbursement from, and cash management and account reconciliation of, any Permitted Account established and maintained for the purpose of receiving MCC Disbursements and making Re-Disbursements (to which Fiscal Agent has sole signature authority); (iv) providing applicable certifications for MCC Disbursement Requests; (v) maintaining and retaining proper accounting, records and document disaster recovery system of all MCC funded financial transactions and certain other accounting functions; (vi) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement, the Fiscal Accountability Plan, or any other relevant Supplemental Agreements; (vii) assisting in the preparation of budget development procedures; and (viii) internal management of the Fiscal Agent operations. Upon the written request of MCC, the Government shall ensure that MiDA terminates the Fiscal Agent, without any liability to MCC, and the Government shall ensure that MiDA engages a new Fiscal Agent, subject to the approval by the Board and MCC. The Government shall ensure that MiDA enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (each, a ''Fiscal Agent Agreement''), such Fiscal Agent Agreement shall not be terminated until MiDA has engaged a successor Fiscal Agent or as otherwise agreed by MCC in writing.

(h) *Auditors and Reviewers.* The Government shall ensure that MiDA carries out the Government's audit responsibilities as provided in Sections 3.8(d), (e) and (f) of this Compact, including engaging one or more auditors (each, an ''Auditor'') required by Section 3.8(d) of this Compact. As requested by MCC in writing from time to time, the Government shall ensure that MiDA also engages (i) an independent reviewer to conduct reviews of performance and compliance under this Compact pursuant to Section 3.8(f) of this Compact, which reviewer shall have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct environmental audits and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) an independent evaluator to assess performance as required under the M&E Plan (each, a ''Reviewer''). MiDA shall select the Auditor(s) or Reviewer(s) in accordance with any Governing Document or other relevant Supplemental Agreement. The Government shall ensure that MiDA enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the ''Auditor/Reviewer Agreement''). In the case of a financial audit required by Section 3.8(f) of this Compact, such Auditor/Reviewer Agreement shall be effective no later than one hundred and twenty (120) days prior to the end of the relevant period to be audited; *provided, however,* if MCC requires concurrent audits of

financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than the date agreed by the Parties in writing.

(i) *Procurement Agent.* The Government shall ensure that MiDA engages one or more procurement agents through an international competitive process (each, a ''Procurement Agent'') to carry out and certify specified procurement activities in furtherance of this Compact on behalf of the Government, MiDA, or Implementing Entity. The roles and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure that MiDA enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the ''Procurement Agent Agreement''). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by MiDA pursuant to the Procurement Agreement (the ''Procurement Plan'') unless MiDA and MCC otherwise agree in writing.

4. Finances and Fiscal Accountability

(a) Multi-Year Financial Plan; Detailed Budget.

(i) *Multi-Year Financial Plan.* The multi-year financial plan for the Program, showing the estimated amount of MCC Funding allocable to each Project (and related Project Activities), the administration of the Program (and its components) and the monitoring and evaluation of the Program (the ''Multi-Year Financial Plan'') over the Compact Term on an annual basis, is summarized in Annex II to this Compact.

(ii) *Detailed Budget.* During the Compact Term, the Government shall ensure that MiDA timely delivers to MCC a detailed budget, at a level of detail and in a format mutually acceptable to MiDA and MCC, for the administration of the Program, monitoring and evaluation of the Program, and the implementation of each Project (the ''Detailed Budget''). The Detailed Budget shall be a component of the Work Plan and shall be delivered by such time as specified in the Disbursement Agreement, or as may otherwise be agreed by the Parties.

(iii) *Expenditures.* Unless the Parties otherwise agree in writing, no financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request shall be submitted, for any activity or expenditure unless the expense for such activity or expenditure is provided for in the Detailed Budget, and unless uncommitted funds exist in the balance of the Detailed Budget for the relevant period.

(iv) *Modifications to Multi-Year Financial Plan or Detailed Budget.* Notwithstanding anything to the contrary in this Compact, MiDA may amend or supplement the Multi-Year Financial Plan, the Detailed Budget, or any component thereof, without amending this Compact so long as MiDA requests and receives the approval of MCC for such amendment or supplement and such amendment or supplement is consistent with the requirements of this Compact (including Section 4 of Annex II) and any relevant Supplemental Agreement between the Parties. If such amendment or supplement, if adopted, would reallocate the funds among the Projects, the Project Activities, or any activity under Program administration or M&E as shown in Annex II, MiDA shall submit a written request for approval by MCC of such amendment or supplement. Any such amendment or supplement shall (1) be consistent with the Objectives and the Implementation Documents; (2) shall not materially adversely impact the applicable Project, Project Activity (or any component thereof), or any activity under Program administration or M&E as shown in Annex II; (3) shall not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; and (4) shall not cause the Government's obligations or responsibilities or overall contribution of resources to be less than as specified in Section 2.2(a) of this Compact, this Annex I or elsewhere in this Compact. Upon any such amendment or supplement, MiDA shall deliver to MCC a revised Detailed Budget, together with a revised Multi-Year Financial Plan, reflecting such amendment or supplement, along with the next MCC Disbursement Request.

(b) *Disbursement and Re-Disbursement.* The Disbursement Agreement (and any schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment, waiver or deferral of any such terms and conditions. The Government and MiDA shall jointly submit the applicable request for an MCC Disbursement (the ''MCC Disbursement Request'') as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MiDA and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with any Governing Document and Disbursement Agreement; *provided, however,* unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in any Governing Document and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) *Fiscal Accountability Plan.* By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MiDA shall adopt, as part of the Implementation Documents, a plan that identifies the principles, mechanisms and procedures to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods, works and services for the accomplishment of the Objectives (the ''Fiscal Accountability Plan''). The Fiscal Accountability Plan shall set forth, among others, requirements with respect to the following matters: (i) Re-Disbursement, timely payment to vendors, cash management and account reconciliation; (ii) funds control and documentation; (iii) accounting standards and systems; (iv) content and timing of reports; (v) preparing budget development procedures and the Compact implementation budget; (vi) policies concerning records, document disaster recovery, public availability of all

financial information and asset management; (vii) procurement and contracting practices; (viii) inventory control; (ix) the role of independent auditors; (x) the roles of fiscal agents and procurement agents; (xi) separation of duties and internal controls; and (xii) certifications, powers, authorities and delegations.

(d) *Permitted Accounts.* The Government shall establish, or cause to be established, such accounts (each, a ''Permitted Account,'' and collectively ''Permitted Accounts'') as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate United States Dollar interest-bearing account (the ''Special Account'') at the Bank of Ghana to receive MCC Disbursements;

(ii) If necessary, a local currency of Ghana account (interest-bearing as appropriate and as further specified in the relevant Supplemental Agreement) (the ''Local Account'') at the Bank of Ghana to which the Fiscal Agent may authorize transfer from any United States Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the Bank Agreement or otherwise. MCC shall have the right, among others, to view any Permitted Account statements and activity directly on-line, where feasible, or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MiDA enters into an agreement with the Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account (the ''Bank Agreement'').

(e) *Currency Exchange.* The Bank shall convert MCC Funding to the currency of Ghana at a rate to which the parties to the Bank Agreement mutually agree, subject to MCC approval.

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and the Projects. Without limiting the generality of the foregoing, and in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MiDA:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MiDA;

(b) Considers as a factor in its decision-making the recommendations of the Zonal Advisory Committees;

(c) Develops and maintains, in a timely, accurate and appropriately comprehensive manner, the MiDA Web site that includes postings of information and documents in English (and other languages where relevant);

(d) Posts on the MiDA Web site, and otherwise makes publicly available via appropriate means (including television, radio and print), in the appropriate language the following documents or information from time to time:

(i) The Compact;

(ii) All minutes of the meetings of the Board and the meetings of each Zonal Advisory Committee unless otherwise agreed by the Parties;

(iii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iv) Such financial information as may be required by this Compact, the Disbursement Agreement or any other Supplemental Agreement, or as may otherwise be agreed from time to time by the Parties;

(v) All Compact Reports;

(vi) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vii) All relevant environmental impact assessments and supporting documents, and such other environmental documentation as MCC may request;

(viii) A copy of the Disbursement Agreement, as amended from time to time;

(ix) A copy of any document relating to the formation, organization and governance of MiDA, including all Governing Documents, together with any amendments thereto;

(x) A copy of the Procurement Agreement (including the Procurement Guidelines), as amended from time to time, and any procurement policies or procedures and standard documents; and

(xi) A copy of certain information derived from each Procurement Plan, as specified in the Procurement Agreement, and all bid requests and notifications of awarded contracts.

6. Environmental Accountability

(a) The Government shall ensure that MiDA (or any other Permitted Designee) undertakes and completes three strategic environmental assessments (each, an ''SEA''), each as a condition precedent to certain MCC Disbursements as described in the Schedules to this Program Annex and further specified in the Disbursement Agreement, and in form and substance satisfactory to MCC, covering, respectively, the Northern Zone, the Afram Basin Zone and the Southern Zone.

(b) The Government shall ensure that MiDA (or any other Permitted Designee) (i) undertakes and completes any environmental impact assessments (each, an ''EIA''), environmental management plans (each, an ''EMP'') and resettlement action plans (each, a ''RAP''), each in form and substance satisfactory to MCC, and as required under the laws of Ghana, the Environmental Guidelines, this Compact or any Supplemental Agreement or as otherwise required by MCC and (ii) undertakes to implement any environmental and social mitigation measures identified in such assessments or plans to MCC's satisfaction.

(c) Government shall commit to fund all necessary costs of environmental mitigation (including costs of resettlement) not specifically provided for in the budget for any Project.

Schedule 1 to Annex I—Agriculture Project

This Schedule 1 generally describes and summarizes the key elements of the Agricultural Productivity and Value-Added Development Project (the ''Agriculture Project'') that the Parties intend to implement in furtherance of the Agriculture Project Objective. Additional details regarding the implementation of the Agriculture Project will be included in the Implementation Documents and in the relevant Supplemental Agreements.

1. Background

Owing to its ability to grow successfully a wide diversity of tropical and sub-tropical crops, Ghana has the potential to become the leading West African supplier of horticultural products into the markets in neighboring African countries and the European Union (''EU'') where the demand for tropical, organic and conventional fruits and vegetables is experiencing strong growth. In addition, domestic food security can be significantly enhanced by expanding the country's utilization of arable land

dedicated to maize, yams, cassava and other traditional food crops.

Agriculture is the backbone of Ghana's economy: it accounts for approximately 40% of the country's GDP, directly employs more than 60% of the labor force and generates more than 55% of the foreign exchange earnings. The agricultural sector consists of five sub-sectors: crops (other than cocoa) and livestock account for 58% of the GDP attributable to the agricultural sector, cocoa for 20%, fisheries for 11% and forestry for the remaining 11%.

Ghana's current agricultural production is largely dominated by rain-fed production of crops for local consumption by smallholder farmers using rudimentary technology. Furthermore, inconsistency in both the supply and the quality of agriculture crops hampers Ghana's ability to compete against other countries supplying the same to the regional and EU markets. Despite non-traditional horticultural crops' potential for earning foreign exchange, the agricultural sector currently produces mostly traditional crops under sub-optimal conditions, including lack of interconnectivity between production areas and markets and limited access to credit. Furthermore, insecure land access and inefficient land registration processes are key risks to the successful expansion of higher-value agribusiness.

Fortunately, a number of concrete steps can set the stage for significant increases in food security, household income, profitable agribusinesses, jobs creation and capital investment in Ghana's agricultural sector. Specifically, in order to exploit fully its agricultural potential, Ghana must improve its yields of high quality product, increase the acreage devoted to commercial, high-value horticultural crops, and consistently meet the international export market standards. Inefficiencies in the value chain will be remedied by improving entrepreneurial and technical skills among farmers and businesses to maximize their output and sales by building a post-harvest infrastructure for preserving the quality of crops during their transportation from the production site to final market destination.

A number of mutually reinforcing activities has been identified to address the above-described constraints that Ghana is facing in achieving the Agriculture Project Objective within the Intervention Zones. In addition, the participation in, and benefits from, the Agriculture Project may extend to those farmers in nearby districts who operate or trade within, or provide supplies to, the Intervention Zones.

2. Summary of the Agriculture Project and Related Projects Activities

The Agriculture Project is designed to enhance the profitability of staple food and horticulture crops and to improve delivery of business and technical services to support the expansion of commercial agriculture among farmer-based organizations (''FBOs''), which are groups of eligible farmers, input suppliers selling to such farmers, or output processors buying from such farmers. MCC Funding will support the following Project Activities:

- *Farmer and Enterprise Training in Commercial Agriculture:* To accelerate the development of commercial skills and capacity among FBOs and their business partners (including service providers to FBOs and other entities adding value to agricultural crops such as processors);
- *Irrigation Development:* To establish a limited number of retention ponds and weirs requested by the FBOs and FBO partnerships for whom access to water is critical to the success of their business objectives;
- *Land Tenure Facilitation:* To improve tenure security for existing land users and to facilitate access to land for commercial crops in the Intervention Zones;
- *Improvement of Post-Harvest Handling and Value Chain Services:* To facilitate strategic investments by FBOs in post-harvest infrastructure improvements and to build the capacity of the public sector to introduce and monitor compliance with international plant protection standards;
- *Improvement of Credit Services for On-Farm and Value Chain Investments:* To augment the supply of, and access to, credit provided by financial institutions operating in the Intervention Zones; and
- *Rehabilitation of Feeder Roads:* To rehabilitate up to 950 km of feeder roads in eight (8) districts in the Intervention Zones in order to reduce transportation costs and time, to increase access to major domestic and international markets, and to facilitate transportation linkages from rural areas to social service networks (including, for instance, hospitals, clinics and schools).

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Agriculture Project. Performance against these benchmarks, as well as the overall impact of the Agriculture Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Agriculture Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Agriculture Project, as well as the Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Agriculture Project are identified in Annex II. Conditions precedent to each Project Activity under the Agriculture Project, and the sequencing of such Project Activities, shall be set forth in the Disbursement Agreement, any other Supplemental Agreements and the relevant Implementation Documents.

The following summarizes each Project Activity under the Agriculture Project:

(a) *Project Activity:* Farmer and Enterprise Training in Commercial Agriculture (''Commercial Training Activity'')

Successful FBOs are critical to the development of Ghana's agricultural potential. The Program will support FBOs by providing training in business management, planning and finance practices, market analyses and marketing, customer service and pricing mechanisms. By achieving critical mass, FBOs can exercise bargaining power in purchasing quality inputs and processing, transport, marketing and other services at lower prices, and consistently provide sufficient quantities of quality produce and crops in the necessary volume, as well as add value to these services, all necessary to enter the commercial markets with competitive products. The continued viability of the FBOs after the Compact Term will be a key to the Ghanaian farmers' continued economic growth, improved farming practices, ability to secure best prices for inputs, access to credit and building of strong farmer communities.

The Commercial Training Activity seeks to strengthen and support both FBOs and certain agribusiness service providers who offer various value-adding services to the FBOs that meet a pre-determined set of criteria to be adopted by MiDA with the approval of MCC.

Specifically, MCC Funding will support the following:

(i) Extension activities by the Ministry of Food and Agriculture (''MOFA''). MOFA will be responsible for providing preliminary organizational and technical support to FBOs seeking eligibility to participate in the commercial training program. MCC Funding will be used for the

mobilization of MOFA's district level extension agents to identify nascent and existing FBOs, as well as farmers and suppliers who are good candidates to organize new FBOs in collaboration with the district assemblies.

(ii) Commercial training program for FBOs. An intensive, multi-phase commercial training program will be offered to the FBOs to improve significantly their skills in management, business planning, technology applications and marketing. Such FBOs will include small and medium-sized enterprises (''SMEs'') that provide agribusiness-related, value-adding services to farmers. Each phase of the program will incorporate training to improve business literacy and numeracy of the members of the FBOs. A priority will be placed on attracting significant participation of women and young adults and on encouraging their engagement in agriculture business opportunities in the target districts in each Intervention Zone. Specifically, the commercial training program will consist of the following three phases:

(1) *Phase One:* To strengthen the business capacity of FBOs, this phase will provide intensive training in strengthening the organization, developing a business vision, and learning to use realistic planning tools towards commercialization and profitability will be provided. Participants will be required to prepare a long-term business plan for approval in accordance with evaluation criteria, adopted by MiDA with the approval of MCC, before moving on to Phase Two of the program. An organization-building incentive in the form of business and communication technology will be available to each participating entity, whether an FBO or an SME, that completes and begins implementing the approved business plan.

(2) *Phase Two:* The business plans developed in Phase One will determine the specific technical training, infrastructure support and inputs to be provided to the participating entities during Phase Two. The focus during Phase Two will be to enable the participating entities to transition into new agricultural crop varieties and to adopt and fully integrate good agricultural practices into their commercial operations.

(3) *Phase Three:* The assistance during Phase Three will focus on helping FBOs to maximize sales volumes in the commercial agriculture markets (domestic, regional or export), with consistent, competitive products and services. Training will focus on quality assurance management (including product handling and preservation, packaging and transportation), as well as on improving the linkages with processors and traders and facilitating their access to market through branding, advertising, information services and promotion of agricultural crops.

(b) Project Activity: Irrigation Development (''Irrigation Activity'')

In order to combat the frequent crop failure and food shortage due to variation in the amount and intensity of rain, along with intermittent droughts, the Government has begun to encourage improved management of water resources by farmers and to support irrigation development programs. For instance, the Government, through the Ghana Irrigation Development Authority, has constructed 22 public irrigation schemes with a combined area of 8,745 hectares designed to grow rice, either double cropped or in rotation with vegetables.

Nonetheless, Ghana's water resources, composed of Lake Volta, formed by the Akosombo Dam and the many tributaries of the Volta River, have been only lightly exploited to irrigate the country's vast tracts of unused land. The Irrigation Activity aims to support the expansion of fruit and vegetable production by smallholder farmers, as well as the various farmer groups, by providing irrigated water to them.

Specifically, subject to the completion of the relevant SEAs to MCC's satisfaction, MCC Funding will support the following:

(i) The construction of small retention ponds in all three Intervention Zones, as well as weirs in the Northern Zone, upon approval by MiDA of proposals for such ponds and weirs submitted by the FBOs. The proposals will be evaluated for funding based on a pre-determined set of criteria to be adopted by MiDA with the approval of MCC, which will include, among others, appropriate assessment of the environmental and social impact of, approved permits for, and the appropriate screening for the economic effects of, the proposed construction.

(ii) With respect to each construction described in Section 2(b)(i) of this Schedule 1 to Annex I, the following activities:

(1) Feasibility and design studies (that include an assessment of the economic rates of return and poverty reduction impacts of the relevant irrigation infrastructure), an EIA, an EMP and a RAP, each as may be necessary; and

(2) Implementation of environmental and social mitigation measures, as identified in the studies described in Section 2(b)(ii)(1) of this Schedule 1 to Annex I, or as otherwise may be appropriate, including compensation of individuals, residences and businesses affected by such rehabilitation and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(c) Project Activity: Land Tenure Facilitation (''Land Activity'')

Ghana currently suffers from an inadequate land policy and regulatory framework, fragmented institutional arrangements, and an underdeveloped land registration system. For instance, six separate public agencies operate in loose coordination under two different ministries, and each has a role in land administration. In part as a result of this institutional fragmentation, land transactions are costly and not transparent, and produce numerous tenure disputes. Other problems in land administration in Ghana include a lack of formal documentation of customary holdings, indeterminate boundaries of private and other land holdings, conflicting records of land rights and delays in negotiating and registering acquisition and transfer of land rights. Currently, there are approximately 40,000 land tenure disputes pending before the courts.

In Ghana, customary rights in land are prevalent and are offered strong legal protections by Ghanaian legislation. In addition, investors and local farmers access land use rights by long-term lease arrangements or other tenancy arrangements, and in some cases by purchases negotiated directly with the relevant community or the Government on behalf of the community. Sound agricultural development in Ghana would be greatly strengthened by making access to land more efficient and secure while preserving secure tenure for local communities.

The Government is in the process of implementing, with support from multiple donors, the Land Administration Project (''LAP'') that seeks to remedy these problems through a systematic reform of the policy and institutional framework governing land tenure. Consistent with the overall policy and methodological framework of LAP, the Land Activity seeks to contribute to an environment of more secure land tenure and more efficient land access in the three Intervention Zones.

Specifically, MCC Funding will support the following:

(i) Facilitation of land transactions by providing on-demand services. To facilitate land transactions on an on-demand basis in all the districts within

the Intervention Zones, MCC Funding will be used to support:

(1) Assessment of the demand for assistance with land transactions and registration, as well as the potential risks to vulnerable people in land transactions, in each district within the Intervention Zones;

(2) Expansion of access to local services, such as information provision, legal services, valuation, land surveying and mediation of land disputes, in collaboration with the Lands Commission, based on the assessment described in Section 2(c)(i)(1) of this Schedule 1 to Annex I;

(3) Development and management of, and creation of awareness for, a land market information database, outreach about the process of land registration and production and circulation, as necessary, of information regarding formal and customary rules and administrative practices on land access and registration; and

(4) Strengthening the capacity of the Lands Commission, and other land sector agencies as appropriate, for more efficient processing of land registration requests, including, subject to approval by MiDA and MCC, supplementing the staffing and providing equipment to automate the processing of land registration requests.

(ii) A pilot program for area-wide registration of rural land rights involving, among others, certain preparatory tasks (including, among others, community sensitization, composite maps and inventory of land rights) and the formalization of land rights consistent with the methodology developed under LAP (including, among others, resolution of land disputes via alternative dispute resolution (''ADR'') mechanisms, formal demarcation of parcel boundaries and issuance of registered land titles). The pilot program for registration of land rights will take place in two phases. In Phase One, the rural areas of the districts of Awutu Efutu Senya, Savalugu-Nanton and Afram Plains will be declared pilot registration districts (''PRDs''). In Phase Two, a similar set of activities, revised to incorporate the lessons learned in Phase One, will be carried out in six additional PRDs selected by MiDA based upon a pre-determined set of criteria adopted by MiDA with the approval of MCC, incorporating the lessons learned in Phase One.

(iii) Development of innovative solutions to the land tenure problems and the fostering of informed stakeholder dialogue on technical, social or policy issues relevant to land tenure and access. This activity will include the development and implementation of (1) a training action plan to build capacity for public and private sector land administration services; (2) an assessment and analysis of the legal and administrative aspects of compensation resulting from ADRs; (3) a small grants program, in coordination with LAP, designed to encourage constructive debate on land issues; (4) workshops and other forums for dialogue; and (5) development and adoption of a gender strategy for implementation of the Land Activity.

(iv) Improvement of the courts' ability to process land disputes. To establish expeditious and inexpensive ways to resolve land disputes and to reduce the backlog of land dispute cases in certain circuit courts, MiDA will collaborate with the Judicial Service to refine their understanding of the nature and scope of existing land disputes and the prospective dispute resolution mechanisms to resolve such disputes; to finalize and implement an action plan identifying the most appropriate approach; to remove the identified backlog of land disputes in each participating court; to automate the records relating to the resolution of the land disputes; and to develop a practice manual on the use of various ADR procedures for use by various members of the circuit courts in the Intervention Zones involved in handling land disputes.

(d) Project Activity: Improvement of Post-Harvest Handling and Value Chain Services (''Post-Harvest Activity'')

A number of post-harvest infrastructure improvements are necessary for the Ghanaian horticulture export industry to become a significant supplier of fruits and vegetables to the EU and other export markets. Therefore, MCC Funding will be used to develop post-harvest handling capacity that maintains the quality of product from the farm to the market. In addition, the capacity of the public sector will be improved to meet International Plant Protection Convention (''IPPC'') standards. In order to ensure the long-term growth and sustainability of the post-harvest infrastructure, the ownership and operation of such infrastructure will be privatized during the Compact Term based on a privatization plan adopted by MiDA with the approval of MCC.

Specifically, MCC Funding will support the following:

(i) Improvements to existing nucleus farm packhouses in the form of forced-air cooling and temporary cold storage units, to be owned and operated by the current owners of such packhouses. Nucleus farmers that procure products from small outgrowers, or are willing to procure outgrower-grown product in the future, will be eligible to obtain such improvements. Eligibility requirements will also include, among others, membership in an agricultural export association that will facilitate the collection of the full repayment of the cost of such improvements, with interest at market rate comparable to that charged borrowers under the Credit Activity, from the nucleus farmer in accordance with guidelines on provision of credit adopted by MiDA with the approval of MCC. Such repayments will be deposited in a special account established by MiDA for reinvestment into activities with the export associations that are consistent with the Program Objective selected by MiDA based on a pre-determined set of criteria adopted by MiDA with the approval of MCC.

(ii) Construction of packhouses and other post-harvest infrastructure for eligible FBOs located in target districts within the Intervention Zones to serve the needs of disadvantaged smallholder farmers growing pineapple, papaya, mango, and certain vegetable and staple crops. The eligibility requirements will include, among others, a plan for full recovery of the operation and maintenance costs of such packhouses in accordance with guidelines on provision of credit adopted by MiDA with the approval of MCC. Any required permits, including environmental permits, will be obtained prior to construction. The ownership of the packhouses will be transferred from MiDA before the expiration of the Compact Term to the relevant FBOs that demonstrate sustained commercial operations.

(iii) Construction of infrastructure for packing and cooling at the Kotoka International Airport that meets international standards, which will be completed in two phases. The first phase will include the construction of basic infrastructure to facilitate packing and storage of fresh agriculture produce, with provision for future installation of cooling facilities. The installation of cooling facilities in the second phase will be triggered by a demonstrated need for such capacity and a plan for the full recovery of the cost of installation, operations and maintenance of such capacity, in accordance with guidelines on provision of credit adopted by MiDA with the approval of MCC. Any required permits, including environmental permits, will be obtained prior to construction.

(iv) Upgrade of Ghana's capacity to meet IPPC standards. Equipment installation, systems improvement and staff training of the Plant Protection and Regulatory Services Directorate within MOFA, the Ghana Standards Board and the Water Resource Institute, will be implemented to improve service delivery to the private sector.

(e) Project Activity: Improvement of Credit Services for On-Farm and Value Chain Investments (''Credit Activity'')

Financial service providers are few and far between in most of the districts in the Intervention Zones and have limited abilities to expand rapidly. Only one commercial bank, the Agriculture Development Bank, is meaningfully engaged in making loans to agricultural clients in the Northern Zone and the Afram Basin Zone. Although there are 37 privately-owned rural banks and seven financial NGOs that serve rural clients in the Intervention Zones, their resources and capacity are very limited. The Credit Activity will support the other Project Activities under the Agriculture Project by facilitating access to credit in the Intervention Zones and assisting the banks to improve their ability to assess, grant and manage agriculture loans.

Specifically, MCC Funding will support the following:

(i) Provision of funds for banks, financial NGOs and other eligible financial intermediaries for on-lending to borrowers in the agricultural sector in the Intervention Zones. It is anticipated that rural banks and financial NGOs will access the facility to make seasonal and other working capital loans with maturities of less than 18 months, and commercial banks will access the facility to make medium-term loans. The financial intermediaries will assume one-half of the credit risk on the loans made using the facility. As an incentive to participate in granting and effectively collecting the loans, the highest-performing rural banks and financial NGOs will be eligible at the end of the Compact Term to receive a portion of the facility as a grant based on a set of performance evaluation criteria adopted by MiDA with the approval of MCC. This will strengthen the capital base of successful banks, enhancing their ability to sustain credit to farmers and the agricultural value chain.

(ii) Establishment of new office locations, branches or loan production offices, in all the Intervention Zones, with a special preference given to the Northern Zone and the Afram Basin Zone for banks, selected based on eligibility criteria adopted by MiDA with the approval of MCC to provide access to credit and financial services in unserved areas.

(iii) Training for rural banks and financial NGOs on credit and management skills consisting of classroom and on-site training throughout the Compact Term, including the purchase of a mobile training center for use in the rural areas for banking training classes and the necessary technology.

(iv) Establishment of pilot programs intended to speed the flow of credit along the agriculture value chain, such as voucher programs with retail input providers.

(f) Project Activity: Rehabilitation of Feeder Roads (''Feeder Roads Activity'')

To improve transportation linkages and to reduce transport costs, MCC Funding will support the rehabilitation or upgrading of about 950 km of feeder roads in the Intervention Zones. The extent to which the feeder roads are rehabilitated or upgraded will depend upon, among others, their current condition, the present and projected traffic volume as a result of increased agricultural activity and productivity in those districts, and the results of an EIA, if any, required under Section 2(f)(ii)(1) of this Schedule 1 to Annex I.

Specifically, subject to the completion of the relevant SEAs to MCC's satisfaction, MCC Funding will support the following:

(i) Rehabilitation and upgrading of the identified segments of feeder roads as follows:

(1) Approximately 205 km of feeder roads in Awutu Efutu Senya;

(2) Approximately 181 km of feeder roads in Akwapim South;

(3) Approximately 55 km of feeder roads in South Tongu;

(4) Approximately 7 km of feeder roads in Keta;

(5) Approximately 49 km of feeder roads in Ketu;

(6) Approximately 44 km of feeder roads in North Dayi;

(7) Approximately 66 km of feeder roads in Hohoe; and

(8) Approximately 337 km of feeder roads in Savelugu Nanton.

(ii) With respect to each feeder road identified in Section 2(f)(i) of this Schedule 1 to Annex I, the following activities:

(1) Feasibility and design studies (that include an assessment of the economic rates of return and poverty reduction impacts of the relevant feeder roads), an EIA, an EMP and a RAP, each as may be necessary;

(2) Implementation of environmental and social mitigation measures, as identified in the studies described in Section 2(f)(ii)(1) of this Schedule 1 to Annex I, or as otherwise may be appropriate, including compensation of individuals, residences and businesses affected by such rehabilitation and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12);

(3) Posting of signage and making other safety improvements; and

(4) Project management, supervision and auditing of such rehabilitation and upgrades.

3. Beneficiaries

The Agriculture Project will directly benefit more than 100,000 farm and rural households, comprising an estimated 500,000 individuals, through the commercial activities of at least 1,200 FBOs and 120 service providers located throughout the 23 target districts in the three Intervention Zones. In addition, the participation in, and benefits from, the Agriculture Project may extend to those farmers in nearby districts who operate or trade within, or provide supplies to, the Intervention Zones. In the Intervention Zones, farmers and others will also benefit through more secure land tenure with an estimated 5,000 tracts of land gaining registered rights, more efficient registration services and more efficient circuit courts for resolution of land disputes. Over 50 commercial banks, rural banks and financial NGOs will benefit from access to new funding, new banking capacity skills, and potentially a permanent injection of new capital at the expiration of the Compact Term to improve seasonal and medium-term credits to rural households and other enterprises engaged in commercial agriculture activities. The rehabilitation and upgrades to the feeder roads is expected to benefit up to 95,000 farm households and agricultural producers by facilitating access to domestic and international markets, and to critical social services.

4. Donor Coordination; Role of Private Sector and Civil Society

Where a number of donors, trade associations and agricultural lenders are already supporting capacity building of the agriculture industry, the Commercial Training Activity, the Irrigation Activity and the Post-Harvest Activity will build upon, and complement, these existing efforts. The lessons learned from other donors' experiences, especially regarding the need to avoid narrowly targeted lending and over-subsidization of interest rates, in order to encourage sustainability will be incorporated into the implementation

of the Credit Activity. The World Bank, Department for International Development of the United Kingdom, KfW Entwicklungsbank, Canadian International Development Agency, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, and Nordic Development Fund all support the LAP. The Land Activity has been conceived within the framework of the LAP and the various lessons learned from the LAP to date will be considered in the implementation of the Land Activity. Selection of feeder roads for inclusion under the Feeder Roads Activity has been coordinated with those roads being funded by the EU under its Feeder Roads Improvement Project.

Ongoing consultations with private sector representatives, as well as smallholder farmers, large farmers, agricultural input suppliers, development organizations, microfinance institutions, processors, traders, exporters and transporters of agricultural products, agricultural industry associations, formal banking institutions, research and higher education institutions, and the representatives of women's and environmental NGOs will be held by MiDA throughout the implementation of the Agriculture Project.

5. U.S. Agency for International Development (''USAID'')

In 2005, USAID initiated the Trade and Investment Program for a Competitive Export Economy (''TIPCEE'') to achieve growth in Ghana's sales of non-traditional exports. TIPCEE seeks to provide, among others, certain targeted farmers with training in improved agricultural practices and access to new varieties of seeds and inputs. The Agriculture Project has been designed with input from USAID so that TIPCEE and the Agriculture Project will mutually support each other. Furthermore, research on land issues by the Institute of Statistical, Social and Economic Research at the University of Ghana will inform the implementation of the small grants program under Section 2(c)(iii)(3) of this Schedule 1 to Annex I. While USAID currently has no projects focusing on the rehabilitation or upgrade of feeder roads in Ghana, the Government intends to continue dialoguing with USAID to identify areas in which USAID's activities may complement the Feeder Roads Activity. Finally, USAID has reviewed and provided input into the designing of the Credit Activity, and the goals and methods of the Credit Activity are consistent with the practices in favor of financial institution's sustainability and the avoidance of subsidies as advocated by USAID.

6. Sustainability

Each Project Activity under the Agriculture Project is designed to advance the food crop and horticulture industry in Ghana and to lay the foundation for substantial and sustainable economic growth. To that end, the improvements in human resource capacity under the Commercial Training Activity, availability of water resources under the Irrigation Activity, land tenure security under the Land Activity, production of exportable produce under the Post-Harvest Activity, the amount of available credit to farmers under the Credit Activity, and efficiency gains in transportation of agricultural goods and access to inputs under the Feeder Roads Activity, together, are expected to transform subsistence and sub-scale cash framers into commercially viable operations, to create new, as well as to strengthen existing, suppliers, processors and marketers on sound business bases and to enhance a climate that attracts additional outside investment in the food crop and horticulture sectors in Ghana, thus leading to continued and sustainable growth of Ghana's agricultural sector.

The environmental and social sustainability of the Agriculture Project will be assured through ongoing consultations with the public regarding the manner in which the Agriculture Project is being implemented. SEAs will be conducted in each Intervention Zone affected by the Agriculture Project and, as necessary, environmental and social analyses (that include an analysis of the gender impacts of the Agriculture Project) will be conducted, as part of the technical survey and design of major investments in any physical infrastructure under the Agriculture Project to determine the environmental impacts and existence of economic and physical displacements, if any. Furthermore, the Government will ensure, directly or through MiDA (or any other Permitted Designee), that environmental and social mitigation measures are developed and implemented for each Project Activity under the Agriculture Project in accordance with the provisions of this Compact and any relevant Supplemental Agreements. MiDA will ensure that environmental and social assessment responsibilities will be included in the bidding documents for the design or supervisory firms, the construction firms, the independent technical auditing firms and any project management advisors. MiDA will ensure that HIV awareness and worker safety training will be included as well in the bidding documents for the construction firms. In addition, any required EIAs, EMPs and RAPs, in form and substance satisfactory to MCC, will be developed and implemented under the Agriculture Project and monitored by MiDA as necessary during the implementation of the Agriculture Project. Any MCC Disbursements for construction will be contingent upon issuance of environmental permits, as needed, or any Government statutory requirements. The Government will fund any project-related environmental mitigation costs (including resettlement costs) that are not already covered by MCC Funding pursuant to Sections 2(b)(ii) and 2(f)(ii) of this Schedule 1 to Annex I.

7. Policy; Legal and Regulatory Reform

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Agriculture Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Government shall adopt an amendment to cause the National Plant Protection Organization to be in compliance with IPPC standards.

(b) Government shall take effective measures to implement the recommendations for legal and institutional reforms for land administration, land management and land tenure as proposed in a memorandum submitted by the Minister of Lands, Forests and Mines to the Cabinet and approved by the Cabinet on February 9, 2006.

(c) Government shall harmonize the relevant land legislation and regulations with the constitutional mandate related to public taking of land for the public good.

8. Proposals

Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement all Project Activities under the Agriculture Project. MiDA will develop, subject to MCC approval, a process for consideration of all such proposals. Notwithstanding the foregoing, MiDA may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive.

Schedule 2 to Annex I—Transportation Project

This Schedule 2 generally describes and summarizes the key elements of the Transportation Infrastructure Development Project (the ''Transportation Project'') that the Parties intend to implement in furtherance of the Transportation Project Objective. Additional details regarding the implementation of the Transportation Project will be included in the Implementation Documents and in the relevant Supplemental Agreements.

1. Background

Agricultural development is critically dependent on a sound transport network for access to inputs and markets. Ghana's transport system consists of four modes: Road, aviation, rail and maritime. Its national road network totals about 60,000 km while it has one international airport and four domestic airports. It has approximately 945 km rail network currently serving the southern half of the country, and its maritime infrastructure consists of 350 km of inland water transport over Lake Volta, in addition to the two seaports at Tema and Takoradi.

Road transport is the dominant mode of transport in Ghana, carrying almost 95% of the passenger traffic and 97% of all movable freight in the country. The Government has identified high transport costs as a barrier to achieving sustainable economic growth inhibiting the expansion of agricultural opportunities by restricting access and linkages to major domestic and international agricultural markets.

In order to address the problem of high transport costs, the Government has developed a rolling five-year strategic plan, out of which the first three-year segment was used to prepare the Road Sector Development Program (''RSDP'') for implementation over the period from 2002 through 2007. The objective of the RSDP is to reduce poverty and disparities in incomes, improve the standard of living in both the rural and urban areas, and raise the quality of life by improving access to social services, all through improved road infrastructure. In addition, under the GPRS, the Government is committed to providing a better distribution of the road network and other transportation linkages to reduce disparities between the urban and the rural communities.

MCC Funding will, therefore, be used to undertake improvements to the road network with emphasis on primary and secondary roads, principally in the Intervention Zones, consistent with the Government's efforts to remove transport disparities between the rural and urban areas, to reduce vehicle operating and maintenance costs and to improve the competitiveness of agricultural producers using these roads. In addition, MCC Funding will also be used to undertake improvements to inland water transport to enhance the transportation network in the Afram Basin Zone.

2. Summary of Transportation Project and Related Projects Activities

The Transportation Project is designed to reduce the transportation costs affecting agricultural commerce at sub-regional and regional levels in Ghana, in support of the Agriculture Project. MCC Funding will support the following Project Activities:

- *Upgrades to Sections of N1 Highway:* To reduce the bottleneck in accessing the International Airport and the Port of Tema and to support an expansion of Ghana's export-directed horticulture base beyond current production, by upgrading of 14 km of the National Highway (''N1 Highway'') between Tema and Accra (specifically, the stretch of N1 Highway from Tetteh Quarshie Interchange to Mallam Road Junction, also known as ''TQM'') and by constructing two grade separation interchanges at the Dimples-Achimota and Mallam Junctions to improve traffic management at these locations;
- *Improvements of Trunk Roads:* To facilitate the growth of agriculture and access to social services by rehabilitating or constructing up to 230 km of trunk roads in the Afram Basin Zone; and
- *Improvements of Lake Volta Ferry Services:* To facilitate the growth of agriculture in the Afram Basin Zone by improving the ferry services of Volta Lake Transport Company (''VLTC'') that connect Adawso on the southern shore to Ekye Amanfrom on the northern shore.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Transportation Project. Performance against these benchmarks, as well as the overall impact of the Transportation Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Transportation Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Transportation Project, as well as the Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Transportation Project are identified in Annex II. Conditions precedent to each Project Activity under the Transportation, and the sequencing of such Project Activities, shall be set forth in the Disbursement Agreement, other Supplemental Agreements or the relevant Implementation Documents.

The following summarizes each Project Activity under the Transportation Project:

(a) Project Activity: Upgrades to Sections of N1 Highway (''N1 Activity'')

The TQM runs in an East-West direction, constitutes a part of the Accra—Tema Motorway and functions as a part of the larger Trans-West Africa Highway. It also supports the urban traffic movement within the Greater Accra Metropolitan Area. The existing TQM, a two lane road, is severely congested during the greater part of the working day, with an estimated traffic flow of between 28,000 and 35,000 vehicles per day.

Since 1996, traffic has been growing around Accra by approximately 7 to 7.5% each year. While overall traffic volumes in Accra continue to increase at a relatively rapid rate, the rate of increase observed on the TQM has been less, reflecting the degree of saturation on the road and travelers' decisions not to use the route at congested times. Observed ''free-flow'' travel speeds on improved sections of the N1 Highway reach 50–70 km per hour; however, at narrower sections including the TQM, average speeds can drop to less than 10 km per hour.

As a result of this congestion and the associated high vehicle operating costs, the Government and its development partners have undertaken to improve and widen sections of the N1 Highway, including those that are contiguous to the TQM. Currently, the TQM acts as a bottleneck and negatively impacts the returns to the investment on the contiguous sections. MCC will fund rehabilitation to, and upgrades of, specific sections of the N1 Highway in an effort to improve the efficiency of the greater road network in and around Accra, including access to the key sea and air export facilities.

Specifically, MCC Funding will support the following:

(i) Improvement and upgrade to the 14 km of N1 Highway between Tetteh Quarshie and Mallam Junctions as a three lane dual carriageway (without service roads) and provision of grade

separation interchanges at the Dimples-Achimota and Mallam Junctions.

(ii) With respect to the improvements and upgrades identified in Section 2(a)(i) of this Schedule 2 to Annex I, the following activities:

(1) Feasibility and design studies (that include an assessment of the economic rates of return and poverty reduction impacts of the relevant sections of the N1 Highway), an EIA, an EMP and a RAP;

(2) Implementation of the environmental and social mitigation measures, as identified in the studies described in Section 2(a)(ii)(1) of this Schedule 2 to Annex I, or as otherwise may be appropriate, including compensation of individuals, residences and businesses affected by such improvements and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12);

(3) Utility relocations, as may be necessary; and

(4) Project management, supervision and auditing of such improvements and upgrades.

(iii) Feasibility and design studies (that include an assessment of the economic rates of return), an EIA, an EMP and a RAP, each as may be necessary for service roads and grade separation at an additional six interchanges along the TQM (the construction of which shall not be funded by MCC Funding).

(b) *Project Activity:* Improvements of Trunk Roads (''Trunk Roads Activity'')

MCC Funding will support the assessment and subsequent improvements of up to 230 km of trunk roads. Specifically, subject to the completion of the relevant SEAs to MCC's satisfaction, MCC Funding will support the following:

(i) Improvements to the following five trunk roads:

(1) Agogo—Dome Road (77 km). Upgrading of 23 km of road between Agogo and Dukusen to bitumen surfacing and rehabilitation or construction of 54 km of road between Dukusen and Dome to gravel surfacing (including rehabilitation or construction of drainage culverts and bridges and contingent upon completion of an environmental audit);

(2) Ejura—Domi Road (22 km). Upgrading from gravel to bitumen surfacing of 22 km of road between Ejura and Domi;

(3) Ekye Amanfrom—Agordeke Road (85 km). Upgrading from gravel to bitumen surfacing of about 46 km, and rehabilitation of 39 km of existing bitumen-surfaced sections, of the road from Ekye Amanfrom and Agordeke;

(4) Nkawkaw-Mpraeso—Kwahu Tafo Road (22 km). Rehabilitation and resurfacing of the bitumen surfaced road from Nkawkaw through Mpraeso to Kwahu Tafo; and

(5) Kwahu Tafo—Adawso (21 km). Completion of paving (into bitumen surfacing) of 21 km of road from Kwahu Tafo to Adawso.

(ii) With respect to the improvements and upgrades identified in Section 2(b)(i) of this Schedule 2 to Annex I, the following activities:

(1) A technical and environmental audit of the Agogo—Dome Road (77 km) to assess the impact of recent rehabilitation activities;

(2) Feasibility and design studies (that include an assessment of the economic rates of return and poverty reduction impacts of the relevant trunk roads), an EIA, an EMP and a RAP, each as may be necessary;

(3) Implementation of the environmental and social mitigation measures, as identified in the studies described in Section 2(b)(ii)(2) of this Schedule 2 to Annex I, or as otherwise may be appropriate, including compensation of individuals, residences and businesses affected by such improvements and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12); and

(4) Project management, supervision and auditing of such improvements and upgrades.

(c) *Project Activity:* Improvements to Lake Volta Ferry Service (''Ferry Activity'')

To facilitate growth of the agricultural sector of the Afram Basin Zone, MCC Funding will be used to support improvements to ferry services of VLTC, connecting Adawso on the southern shore to Ekye Amanfrom on the northern shore.

Specifically, subject to the completion of the relevant SEAs to MCC's satisfaction, MCC Funding will support the following:

(i) Construction of two double-ended vehicle/pedestrian ferries with hydraulic liftable propellers.

(ii) Training of VLTC staff, including management and occupational safety training for workshop foremen from VLTC's staff in Akosombo, VLTC's workshop staff, artisans, and ferry crew.

(iii) Rehabilitation of the Akosombo floating dock to enhance VLTC's construction, repair and maintenance capabilities.

(iv) Civil works at the landing stages at Adawso and Ekye Amanfrom to increase the ferry and vehicle handling capacities at the same landing stages.

(v) Rehabilitation of ferry terminals at Adawso and Ekye Amanfrom, including all-weather protection and adequate sanitation facilities to accommodate additional ferry and passenger traffic.

(vi) Extraction of tree-stumps from the crossing route between Adawso and Ekye Amanfrom to eliminate navigational and safety hazards during low water periods.

(vii) With respect to the improvements and upgrades identified in Sections 2(c)(i)–(vi) of this Schedule 2 to Annex I, the following activities:

(1) Feasibility and design studies (that include an assessment of the economic rates of return and poverty reduction impacts), an EIA, an EMP and a RAP, each as may be necessary;

(2) Implementation of the environmental and social mitigation measures, as identified in the studies described in Section 2(c)(vii)(1) of this Schedule 2 to Annex I, or as otherwise may be appropriate, including compensation of individuals, residences and businesses affected by such improvements and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12); and

(3) Project management, supervision and auditing of such improvements and upgrades.

3. Beneficiaries

The principal beneficiaries of the Transportation Project are expected to be the users of the improved roads and ferry facilities since it decreases transportation costs to markets and social service delivery points and employees, in addition to the owners of urban and rural businesses that rely on the Ghanaian road network.

More specifically, the N1 Highway upgrades are expected to benefit approximately 150,000 daily users and should support a broader expansion of Ghana's export-directed horticulture beyond its current production base of less than 7,000 hectares. Improvements to the trunk roads are expected to open new economic opportunities for approximately 25,000 agricultural households and users, spurring agricultural production in the Afram Basin Zone, most of whom are considered poor or very poor. These improvements will also facilitate access to social services, including health and education, for these poor households. The benefits from time savings by introducing additional ferries will accrue to all users of the ferry. More fundamentally, improved reliable ferry service in the district of Afram Plains should generate improved access to inputs and markets for farmers and

increased competition among truckers, which should in turn yield increased farmgate prices and reduced operating costs. These benefits are likely to be divided equally between farmer and users, on the one hand, and the vehicle owners, on the other hand, a great majority of whom are poor.

4. Donor Coordination

Donor coordination in the transport sector in Ghana is organized through RSDP, bringing together, among others, the World Bank, the African Development Bank, Department for International Development (''DFID''), EU, Japan International Cooperation Agency and the Arab Bank for Economic Development, for a multi-year integrated funding program of approximately US$1.2 billion. The collaboration takes place through the annual donor conference and in-country monthly meetings to review the performance of the sector. The road agencies in Ghana have received substantial donor support for construction, maintenance and institutional strengthening.

The Transportation Project coordinates with many ongoing and planned donor activities, and has been structured to ensure complementarity. For instance, none of the selected roads under the Trunk Roads Activity is expected to benefit from other donor-supported interventions. In addition, there has been no material donor support to the VLTC in recent years whereas the Ferry Activity is designed specifically to support this critical transport link to one of the poorest districts in Ghana.

5. U.S. Agency for International Development

USAID currently does not focus specifically on the construction and rehabilitation of the transportation infrastructure in Ghana. However, MiDA will continue to dialogue with USAID to identify potential opportunities for coordination with respect to the Transportation Project.

6. Sustainability

The Ministry of Transportation (''MoT'') is the principal institution responsible for the effective and sustainable management of the road network in Ghana. As such, it plays a central role in coordinating and regulating activities of the road agencies (i.e., Department of Feeder Roads (''DFR''), the Department of Urban Roads (''DUR''), the Ghana Highway Authority (''GHA'') and the Ghana Road Fund (''GRF'')). GHA, DFR and DUR are responsible for the administration, planning, control, development and maintenance of the trunk road network, feeder roads and urban roads, respectively.

Approximately 45% of the MoT's annual budget is allocated to operation and maintenance of the existing road network. Currently, the maintenance of the roads is generally funded through GRF, which provides a sustainable and reliable source of funds to pay for maintenance of the road network. Its sources of revenue include fuel levies, vehicle registration fees, road use fees, road tolls, bridge tolls, ferry tolls, and international transit fees (for foreign vehicles entering Ghana). The MoT is committed to maintaining this funding. It has also developed a plan to increase the total number of kilometers of maintainable roads by about 3,600 km a year, primarily though spot improvement and rehabilitation of roads previously considered as non-maintainable. GRF monies will be used to maintain the roads constructed or improved under this Transportation Project.

While VLTC is financially self-sustaining based on current toll levels, a lack of suitable equipment to accommodate an increasing number of ferry passengers is a key constraint to consistent, economic service by VLTC. Its severely limited maintenance capacity and, by extension, its operational abilities endanger continuity and dependability of its service. Spare parts for the presently operating ferries are difficult to obtain and the main auxiliary engines of the current ferry are no longer in production. MCC Funding is critical in ensuring efficient and timely services and meeting projected demand. MCC Funding will expand VLTC's service and maintenance capabilities and is expected simultaneously to reduce its recurrent direct costs.

The environmental and social sustainability of the Transportation Project will be assured through ongoing consultations with the public regarding the manner in which the Transportation Project is being implemented. SEAs will be conducted in each Intervention Zone affected by the Transportation Project (other than the district affected solely by the N1 Activity) and, as necessary, environmental and social analyses (that include an analysis of the gender impacts of the Transportation Project) will be conducted, as part of the technical survey and design of major investments in any physical infrastructure under the Transportation Project to determine the environmental impacts and existence of economic and physical displacements, if any. Furthermore, the Government will ensure, directly or through MiDA (or any other Permitted Designee), that environmental and social mitigation measures are developed and implemented for each Project Activity under the Transportation Project in accordance with the provisions of this Compact and any relevant Supplemental Agreements. MiDA will ensure that environmental and social assessment responsibilities will be included in the bidding documents for the design or supervisory firms, the construction firms, the independent technical auditing firms and any project management advisors. MiDA will ensure that HIV awareness and worker safety training will be included as well in the bidding documents for the construction firms. In addition, any required EIAs, EMPs and RAPs, in form and substance satisfactory to MCC, will be developed and implemented under the Transportation Project and monitored by MiDA as necessary during the implementation of the Transportation Project. Any MCC Disbursements for construction will be contingent upon issuance of environmental permits, as needed, or any other Government statutory requirements. The Government will fund any project-related environmental mitigation costs (including resettlement costs) that are not already covered by MCC Funding pursuant to Sections 2(a)(ii), 2(b)(ii), and 2(c)(vii) of this Schedule 2 to Annex I.

7. Policy; Legal and Regulatory Reform

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Transportation Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) Government shall allocate sufficient funds from GRF or other sources to ensure proper routine and periodic maintenance of the road network through continuing to increase GRF revenues (through fuel levies, tolls, vehicle registration/licensing fees, among others) and to ensure that GRF revenues are used first for maintenance before any allocations are made for other works (such as rehabilitation).

(b) Government shall adhere to agreements reached with donors under the RSDP and the upcoming Transport Sector Development Program.

(c) Government shall develop a maritime framework governing access and operations on Lake Volta with respect to the Ferry Activity.

(d) Government shall develop and approve the emergency response plans of VLTC with respect to the Ferry Activity.

8. Proposals

Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement all Project Activities under the Transportation Project. MiDA will develop, subject to MCC approval, a process for consideration of all such proposals. Notwithstanding the foregoing, MiDA may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive.

Schedule 3 to Annex I—Rural Development Project

This Schedule 3 generally describes and summarizes the key elements of the Rural Services Development Project (the ''Rural Development Project'') that the Parties intend to implement in furtherance of the Rural Development Project Objective. Additional details regarding the implementation of the Rural Development Project will be included in the Implementation Documents and in the relevant Supplemental Agreements.

1. Background

Residents of rural areas of Ghana have spotty and frequently poor access to basic community services such as potable water, community sanitation, schools at all levels and domestic electricity. This has both limited the productivity of these people and made it difficult to attract or retain skilled entrepreneurs or workers in the rural areas. In turn, this has limited Ghana's ability to realize the full potential of its agricultural resources.

In the past, the Government delivered community services, such as schools and water or sanitation facilities, with primary direction from the central government and little input from the local governments or the beneficiaries. Consequently, decisions on the location and the design of community resources were frequently suboptimal, and the resulting delivery of the related services inefficient. During the past few years, however, the Government committed to a strategy of decentralization to empower local governments and the beneficiaries in the hopes of more efficient delivery of community services.

One of the major obstacles to successful implementation of this strategy is the lack of adequately trained specialists in local governments. For instance, the lack of capacity at the local level to conduct public procurement results in leakage, misuse, and suboptimal use of public resources. Therefore, the Government and the donors have increasingly provided support to build the institutional capacity of local government units and to support the ability of rural populations to influence more directly the provision of community services that impact them.

In addition, currently in Ghana, there is a shortage of credit, as well as financial services, available in general to a large portion of the rural populations, and in particular to those engaged in agriculture. Much of the financial sector currently focuses on providing capital to people in the urban areas or on shorter-term commercial activity rather than to investments in agricultural production, partly owing to the high risks and transaction costs in making such loans.

Insufficiency of rural services has constrained the growth of the private sector in rural areas. Ghana's development plans, including the GPRS and other strategies, have been designed to foster private sector led growth and development. However, the success of these programs has been constrained by the lack of services in rural communities. The Rural Development Project is designed to address each of these problems in a coordinated fashion by improving the design and delivery of community services through enhancing the capacity of the local government units, by allowing the beneficiaries to provide meaningful input on the decisions on investment in community infrastructure and by improving the efficiency of the rural financial institutions in order that they may serve the people in agriculture more effectively.

2. Summary of Rural Development Project and Related Projects Activities

The Rural Development Project is designed to support agricultural and agri-business development under the Agriculture Project and to strengthen the rural institutions that provide complementary services. MCC Funding will support the following Project Activities:

- *Strengthening of Public Sector Procurement Capacity:* To support the development of procurement professionals and reinforce the capabilities of the Government to procure goods and services;
- *Support for Community Services:* To complement the Agriculture Project by funding construction and rehabilitation of educational facilities, construction and rehabilitation of water and sanitation facilities and electrification of the rural areas, and by providing capacity building support to local government institutions; and
- *Strengthening of Rural Financial Services:* To automate and interconnect the 121 rural banks and to provide other improvements in the national payments systems that will draw a large number of people currently not served or under-served into the financial system, and, if there is sufficient funding and appropriate waivers are granted, to interconnect the savings and loans institutions to the national payments system.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor the progress of the implementation of the Rural Development Project. Performance against these benchmarks, as well as the overall impact of the Rural Development Project, will be assessed and reported at the intervals to be specified in the M&E Plan, or as otherwise agreed by the Parties, from time to time. The Parties expect that additional indicators will be identified during implementation of the Rural Development Project. The *expected results* from, and the *key benchmarks* to measure progress on, the Rural Development Project, as well as the Project Activities undertaken or funded thereunder, are set forth in Annex III.

Estimated amounts of MCC Funding for each Project Activity for the Rural Development Project are identified in Annex II. Conditions precedent to each Project Activity under the Rural Development Project, and the sequencing of such Project Activities, shall be set forth in the Disbursement Agreement, other Supplemental Agreements or the relevant Implementation Documents.

The following summarizes each Project Activity under the Rural Development Project:

(a) *Project Activity:* Strengthening of Public Sector Procurement Capacity (''Procurement Capacity Activity'')

The Procurement Capacity Activity is designed to strengthen the capacity of the various procurement entities within the Government to procure necessary goods, works and services with greater economy, efficiency and effectiveness. It is also intended to allow such entities to implement fully Ghana's Public Procurement Act of 2003 (Act 663) by assisting the development of training materials for the staff of such entities, the formation of a career path within the Government, and the placement of trainees in such procurement entities to provide them with practical application.

Specifically, MCC Funding will support the following:

(i) Development of the modules for training and certification that are relevant to the public sector and consistent with Ghana's Public Procurement Act of 2003 (Act 663), including consultation with educational institutions to develop a standard procurement curriculum for use in formal procurement training programs, development of an internationally-accepted educational program in procurement in conjunction with other international procurement bodies such as the Chartered Institute of Purchasing and Supply of the United Kingdom, and introduction of such curriculum to the various institutions that will offer courses in procurement.

(ii) Establishment of procurement as a career in public service with clear lines of promotion and reporting by assisting the Government in attracting a cadre of procurement professionals, in clearly defining the career paths as a procurement professional in the Government (including formulating the requirements for entry and promotion, defining a procurement career path with clear job functions, grades, promotion rules and salary structure) and establishing a well-trained procurement staff whose duties are institutionalized within the Government.

(iii) Provision of procurement-related training to potential procurement professionals by identifying a target group of professionals, students and public or civil service members qualified to enter into a structured procurement training program, establishing agreements, policies, procedures, and protocols with the various public and civil service organizations, educational institutions and private sector businesses to identify and provide short term and interim opportunities for procurement program participants to perform procurement and supply chain activities in both public and private sectors and establishing a procurement internship program that has entry requirements, predetermined procurement training requirements, clear job functions for the program, a stipend structure for internship assignments, and rules for compliance and completion.

(b) Project Activity: Support for Community Services (''Community Services Activity'')

The Community Services Activity is designed to complement the Agriculture Project by providing educational, water and sanitation and rural electrification infrastructure in the Intervention Zones and by enhancing the capacity of local governments to deliver the related services. These interventions are part of a larger effort by the Government to expand the provision of basic community services throughout Ghana, and are specifically expected to enhance the sustainability of the Agriculture Project by providing the necessary infrastructure to improve health of communities, to enhance skill development through access to education, and to facilitate small-scale post-harvest processing of agricultural products. Availability of funding to the districts in the Intervention Zones will be a function of population, relative poverty and actual investment performance under the Agriculture Project. Specific investments will be driven by the demands of local communities, prioritized through a broad-based, inclusive process to enhance community ownership and strengthen sustainability.

Specifically, MCC Funding will support the following:

(i) Capacity building by Rural Infrastructure Coordinating Unit (''RICU'') of the Ministry of Local Government, Rural Development and Environment for the local government units in the Intervention Zones to strengthen their ability to deliver community services, to manage assets and to ensure transparency and accountability in their operations.

(ii) Rehabilitation and construction of educational facilities in the form of primary, junior secondary and senior secondary schools, as well as vocational and technical institutions; *provided* that such rehabilitation or construction (1) is consistent with the agreed norms of the Ministry of Education, Science and Sports, Ghana Educational Service, and other parties as may be agreed from time to time between MiDA and MCC, (2) is included in the list of priorities of the relevant district's ''District Development Plan,'' and reflected in the annual district budget and District Assembly Common Fund (''DACF'') plans, (3) is in a community that demonstrates commitment to such rehabilitation or construction through contributions of cash or other property (including land and raw material) or labor, (4) is consistent with the standards on adequacy of the provision of operating costs (including staffing, as well as the operation and maintenance, of the facilities) adopted by MiDA with the approval of MCC, (5) meets criteria satisfying cost effectiveness, (6) is within a district in which the Agriculture Project is being implemented and (7) does not create any adverse environmental or social impact under the standards adopted by MiDA with the approval of MCC; *provided, further,* that the foregoing may be adjusted based on the results of the relevant SEA upon its completion.

(iii) Construction of water and sanitation facilities to achieve improved health, to reduce the incidence of illness and loss of productivity due to unsafe drinking water and poor sanitation and hygiene, and to reduce the time required to procure potable water. MCC Funding will be used to fund boreholes (whether mechanized or using hand-pumps), small town pipe systems and community sanitary facilities; *provided that,* such construction (1) is consistent with the agreed norms of the Community Water and Sanitation Authority, as well as of the Ministry of Water Resources, Works and Housing, and other parties as may be agreed from time to time between MiDA and MCC, (2) is included in the list of priorities of the relevant district's ''District Development Plan,'' and reflected in the annual budget and DACF plans, (3) is in a community that demonstrates commitment to such construction through contributions of cash or other property (including land or raw material) or labor, (4) is consistent with the standards on adequacy of the provision of operating costs (including staffing, as well as the operation and maintenance, of the facilities) and cost recovery mechanisms adopted by MiDA with approval of MCC, (5) meets criteria satisfying cost effectiveness, (6) is within a district in which the Agriculture Project is being implemented, (7) includes a hygiene education module and (8) does not create any adverse environmental or social impact under the standards adopted by MiDA with the approval of MCC; *provided, further,* that the foregoing may be adjusted based on the results of the relevant SEA upon its completion.

(iv) Expansion of rural electrification to unserved and underserved areas for domestic uses as well as for use in irrigation, agricultural processing and education. MCC Funding will be used to fund both on-grid and off-grid (including photovoltaic, biofuel and micro-hydro) rural electricity investments; *provided that,* such investment (1) is consistent with the policy and strategic plans of the Ministry of Energy, the Electric Corporation of Ghana, the Volta River Authority and other parties as may be agreed from time to time between MiDA and MCC, (2) is in a community that demonstrates commitment to such construction through contributions of cash or other property (including land or raw material) or labor, (3) is

consistent with the standards on adequacy of the provision of operating costs (including staffing, as well as the operation and maintenance, of the facilities) and cost recovery mechanisms adopted by MiDA with approval of MCC, (4) is within a district in which the Agriculture Project is being implemented, (5) meets criteria satisfying cost effectiveness, and (6) does not create any adverse environmental or social impact under the standards adopted by MiDA with the approval of MCC; *provided, further,* that the foregoing may be adjusted based on the results of the relevant SEA upon its completion.

(v) With respect to the activities identified in Sections 2(b)(ii), (iii) and (iv) of this Schedule 3 to Annex I, the implementation of the environmental and social mitigation measures including compensation of individuals, residences and businesses affected by such improvements and upgrades, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12).

(c) *Project Activity:* Strengthening of Rural Financial Services (''Financial Services Activity'')

The Financial Services Activity is designed to extend the depth and value of financial services provided to rural populations including farmers by reinforcing their integration into the cash economy, as well as widening their access to savings, credit and cash transfer services. It will build on the capabilities of the rural banks that are privately-owned generally by members of the local communities. These projects will connect the rural banks into the national payments systems of Ghana, and will also facilitate internal and international remittance flows. In addition, if there is sufficient MCC Funding, and if Ghana Microfinance Network lacks other financial support to maintain its microfinance institution data collection and performance monitoring activities, MCC may, at its option, provide financial support to Ghana Microfinance Network for such maintenance.

Specifically, MCC Funding will support the following:

(i) Extension and intensification of the program initiated under the World Bank Rural Financial Strengthening Project to automate the accounting systems of substantially all of the 121 rural banks (and their branches) using a common software platform. Priority will be given to automating those rural banks and their branches located in the Intervention Zones.

(ii) Connection of the rural banks and their branches to a wide area network. The rural banks and their branches will be connected through a grid to transform their product offerings and to reduce their operating expenses.

(iii) Support for the software to introduce check truncation, hardware to create a system for the automated clearing of electronic payments and technical assistance to review and propose amendments to the existing legal and regulatory structure for payments under Ghana's national payment system.

(iv) National campaign to educate businesses, banks, and consumers regarding the benefits of the Financial Services Activity to generate demand for use of the electronic payment products. A broad-based urban and rural education campaign will demonstrate the benefits of these new products and of the institutions that offer them.

3. Beneficiaries

The Procurement Capacity Activity will directly benefit Ghana as approximately 11 to 15% of all goods and services produced in Ghana are consumed through public procurements. The Community Services Activity will primarily benefit the same populations as the Agriculture Project, that is, the residents of the districts in the Intervention Zones. Institutional beneficiaries will also include the local government institutions (e.g., the district assemblies and their area councils). Finally, rural inhabitants will benefit from the continuing devolution and decentralization of provision of a full range of community services, thus increasing community empowerment. The beneficiaries of the Financial Services Activity will include the economically active population in rural areas as actual or potential clients of the rural banks, and more broadly, all users of financial services. The outreach of new financial services to rural communities and the poor should create incentives to de-emphasize cash transactions in favor of checks and other payment instruments, and the direct savings from such changeover will include, among others, a reduction in the national currency printing bill, the very substantial costs of secure currency transport, and the material interest expense that the Bank of Ghana incurs in issuing securities to absorb excess liquidity at the end of the cocoa season. The automation of the rural banks will also improve and streamline the supervision of these institutions by the Bank of Ghana, and otherwise improve the breadth and speed of management reporting systems.

4. Donor Coordination; Role of Civil Society

The Procurement Capacity Activity complements the activities of other donors. DFID is actively supporting the Public Procurement Board (''PPB'') in Ghana with an interest in developing procurement capacity within existing government bodies. The increased demand for public sector procurement capacity created by the recent enactment of the Public Procurement Act of 2003 (Act 663) allows for multiple donors to be involved without duplication of efforts. In addition, policy and regulatory initiatives funded under this Rural Development Project will be designed to complement and support the efforts of other donors (including the World Bank) that are leading similar initiatives at the regional and district levels.

The Community Services Activity builds on the Community Based Rural Development Program, funded by the World Bank and Agence Française de Développement, strengthening local government service delivery, providing capacity building to local government units and building substantial enhancements to the quality and productivity of rural communities. The Community Services Activity will also be in line with efforts of the Government and other donors to strengthen local government institutions in order to facilitate the delivery of education and water and sanitation infrastructure. The district assemblies and area councils are assuming increasing responsibility for planning, coordinating and executing donor activities in their respective areas.

The efforts to automate the rural banks and to connect them through a wide-area-network under the Financial Services Activity are extensions and intensifications of the efforts of the World Bank, African Development Bank and International Fund for Agricultural Development, first, to create Apex Bank to provide services to the rural banks and, second, to begin the process of automation using a common software.

Finally, the civil society will play a key role in community by overseeing the organization, information dissemination, project implementation, and monitoring and evaluation with respect to the Rural Development Project.

5. U.S. Agency for International Development

USAID has supported a number of programs in the education sector which led to the construction of classrooms, staff houses and latrines, in addition to

a program entitled Strategies for Advancing Girls' Education. USAID has also undertaken projects in community water and sanitation, including provision of hygiene education. The Rural Development Project will continue to advance the objectives of these USAID programs while also greatly expanding on them to complement the Agriculture Project.

6. Sustainability

The Procurement Capacity Activity will create ''educational capital,'' in the form of curricula and diploma programs, which will serve a longer-term goal of capacity building within the Government. The Procurement Capacity Activity is designed to continue as an institutional capacity program after the expiration of the Compact Term, under the direction of the PPB. During the Compact Term, the various ministries of the Government will be required to present sustainable and economically viable plans to maintain and provide continuing education for their respective procurement staff. The Community Services Activity will ensure appropriate measures for adequate cost recovery and continuing operation and maintenance as a condition precedent to approval of investments, providing a basis to ensure sustainability after construction. Rural banks participate voluntarily in the wide area network activity, subject to a commitment to maintain equipment and service from their operating budgets beyond the Compact Term.

The environmental and social sustainability of the Rural Development Project will be assured through ongoing consultations with the public regarding the manner in which the Rural Development Project is being implemented. SEAs will be conducted in each Intervention Zone affected by the Rural Development Project and, as necessary, environmental and social analyses (that include an analysis of the gender impacts of the Rural Development Project) will be conducted, as part of the technical survey and design of major investments in any physical infrastructure under the Rural Development Project to determine the environmental impacts and existence of economic and physical displacements, if any. Furthermore, the Government will ensure, directly or through MiDA (or any other Permitted Designee), that environmental and social mitigation measures are developed and implemented for each Project Activity under the Rural Development Project in accordance with the provisions of this Compact and any relevant Supplemental Agreements. MiDA will ensure that environmental and social assessment responsibilities will be included in the bidding documents for the design or supervisory firms, the construction firms, the independent technical auditing firms and any project management advisors. MiDA will ensure that HIV awareness and worker safety training will be included as well in the bidding documents for the construction firms. In addition, EMPs and RAPs, in form and substance satisfactory to MCC, will be developed and implemented under the Rural Development Project and monitored by MiDA as necessary during the implementation of the Rural Development Project. Any MCC Disbursements for construction will be contingent upon issuance of environmental permits, as needed, or any other Government statutory requirements. The Government will fund any project-related environmental mitigation costs (including resettlement costs) that are not already covered by MCC Funding pursuant to Section 2(b)(v) of this Schedule 3 to Annex I.

7. Policy; Legal Reform; and Procedural Changes

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government shall pursue in support, and to reach the full benefits, of the Rural Development Project, the satisfactory implementation of which will be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The PPB shall develop a funding and sustainability plan for Procurement Capacity Activity (including the amount of such funding) in form and substance satisfactory to MCC.

(b) Service norms defining expected provision of relevant services to rural communities, and standards for appropriate designs, including initial capital cost and estimated continuing operating and maintenance costs, will be agreed among the various Government Affiliates, including the relevant ministries, departments and agencies, and adopted by MiDA, subject to approval of MCC, for all investments to be undertaken under the Community Services Activity.

8. Proposals

Public solicitations for proposals are anticipated to procure goods, works and services, as appropriate, to implement all Project Activities under the Rural Development Project. MiDA will develop, subject to MCC approval, a process for consideration of all such proposals. Notwithstanding the foregoing, MiDA may also consider, using a process developed subject to MCC approval, any unsolicited proposals it might receive.

Annex II—Summary of Multi-Year Financial Plan

This Annex II to the Compact (the ''Financial Plan Annex'') summarizes the Multi-Year Financial Plan for the Program. Each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section reference herein is to the relevant Section of the main body of the Compact.

1. General

A multi-year financial plan summary (''Multi-Year Financial Plan Summary'') is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MiDA will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact Term based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least thirty (30) days prior to the anniversary of the Entry into Force, the Parties shall mutually agree in writing to a Detailed Budget for the upcoming year of the Program, which shall include a more detailed budget for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. Implementation and Oversight

The Multi-Year Financial Plan and each Detailed Budget shall be implemented by MiDA, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governing Documents and the Disbursement Agreement.

3. Estimated Contributions of the Parties

The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, M&E and each Project. The Government's contribution of resources to Program administration, M&E and each Project shall consist of (a) ''in-kind'' contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in this

Compact, and (b) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; *provided*, in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required effectively to carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

4. Modifications

The Parties recognize that the anticipated distribution of MCC Funding among the various activities for Program administration, M&E, the Projects and the Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, as provided in Section 4(a)(iv) of Annex I, the Parties may, upon agreement of the Parties in writing and without amending the Compact, change the designations and allocations of funds among the Projects, the Project Activities, or any activity under Program administration or M&E, or between a Project identified as of the Entry into Force and a new project, without amending this Compact; *provided, however*, that such reallocation (a) is consistent with the Objectives and the Implementation Documents, (b) shall not materially adversely impact the applicable Project, Project Activity (or any component thereof), or any activity under Program administration or M&E as specified in this Annex II, (c) shall not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (d) shall not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact.

5. Conditions Precedent; Sequencing

MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements and Material Re-Disbursements for the Program is subject to satisfactory progress in achieving the Objectives and on the fulfillment, deferral or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant activity under the Program. The sequencing of Project Activities or sub-activities and other aspects of how the Parties intend the Program to be implemented will be set forth in the Implementation Documents, including the Work Plan for the Program (and each component thereof), and MCC Disbursements and Re-Disbursements will be made consistent with such sequencing.

EXHIBIT A.—MULTI-YEAR FINANCIAL PLAN SUMMARY

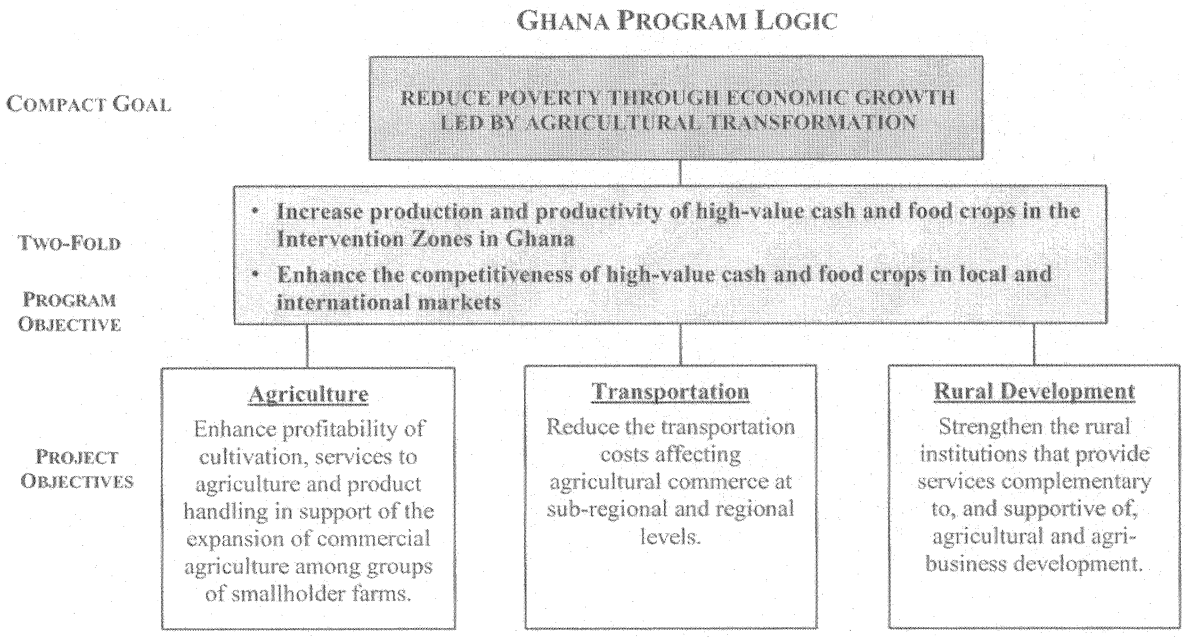
Project	(US $ '000)					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Agriculture Project:						
(a) Commercial Training Activity	9,542	14,081	17,511	15,946	8,935	66,015
(b) Irrigation Activity	.....	942	8,679	11,378	6,609	27,608
(c) Land Activity	2,790	2,698	2,343	1,705	1,152	10,688
(d) Post-Harvest Activity	3,641	6,504	6,747	2,782	702	20,376
(e) Credit Activity	14,300	12,200	13,100	10,300	8,500	58,400
(f) Feeder Roads Activity	2,344	10,644	21,955	22,954	.....	57,897
Sub-Total	32,617	47,069	70,335	65,065	25,898	240,984
2. Transportation Project:						
(a) N1 Activity	13,099	11,200	18,576	28,752	29,669	101,296
(b) Trunk Roads Activity	1,484	6,739	13,900	14,331	.....	36,454
(c) Ferry Activity	263	2,141	2,950	.....	.....	5,354
Sub-Total	14,846	20,080	35,426	43,083	29,669	143,104
3. Rural Development Project:						
(a) Procurement Capacity Activity	447	921	950	.....	.....	2,318
(b) Community Services Activity	7,500	15,000	22,500	30,000	.....	75,000
(c) Financial Services Activity	7,576	5,189	7,078	4,127	.....	23,970
Sub-Total	15,523	21,110	30,528	34,127	.....	101,288
4. Monitoring and Evaluation	3,000	3,000	3,000	3,000	3,000	15,000
Sub-Total	3,000	3,000	3,000	3,000	3,000	15,000
5. Program Administration and Audits:						
(a) Program Administration (MiDA)	4,915	5,188	5,326	5,573	5,852	26,854
(b) Fiscal Agent	300	1,073	1,608	1,678	716	5,375
(c) Procurement Agent	310	1,013	1,519	1,585	677	5,104
(d) Audit	1,500	1,500	1,500	1,500	1,500	7,500
(e) Strategic Environmental Assessments	1,800	.....	.....	.....	.....	1,800
Sub-Total	8,825	8,774	9,953	10,336	8,745	46,633
Total Estimated MCC Contribution	74,811	100,033	149,242	155,611	67,312	547,009

Annex III—Description of the M&E Plan

This Annex III to the Compact (the ''M&E Annex'') generally describes the components of the Monitoring and Evaluation Plan for the Program, and how the progress toward the Compact Goal will be measured. Each capitalized term in this M&E Annex shall have the same meaning given such term elsewhere in this Compact. This M&E Annex represents the agreement between the Government and MCC on the Compact Goal and the Objectives of the Program and the timeline for achieving them.

1. Overview

As a condition precedent to certain MCC Disbursements as provided in the Disbursement Agreement, the parties shall formulate an M&E Plan that specifies (a) how the implementation of the Program and progress toward the Compact Goal and Objectives will be monitored (the ''Monitoring Component''), (b) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project Activities to determine their impact and likely sustainability (the ''Evaluation Component'') and (c) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically-generated reports, will be made publicly available on the MiDA Web site and elsewhere. The Compact Goal, the Program Objective and the Project Objectives are summarized in the following diagram:



2. Monitoring Component

To monitor progress toward the achievement of the Compact Goal and the Objectives, the Monitoring Component of the M&E Plan shall contain the following elements:

(a) *Indicators.* The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each Indicator will have one or more targets that quantify the result and the expected time by which that result will be achieved (each, a ''Target''). The M&E Plan will detail the process for measuring, and reporting on, the Indicators at several levels. First, the indicators for the Compact Goal (each, a ''Compact Goal Indicator'') will measure the results for the overall Program on the intended beneficiaries (collectively, the ''Beneficiaries''). Second, the indicators for the Program Objective (each, an ''Objective Indicator'') will measure the ultimate result for the Program. Third, intermediate indicators (each, an ''Outcome Indicator'') will measure the intermediate results achieved under each of the Project Activities (each, an ''Outcome'') in order to provide early measures of progress towards the accomplishment of the Project Objective. Further, other indicators will be included in the M&E Plan to measure the delivery of goods and services under the Project Activities.

(i) *Compact Goal Indicators.* The M&E Plan shall contain the Compact Goal Indicators and their definitions, as listed in the table below. The corresponding Targets to be achieved are in the following tables:

COMPACT GOAL INDICATORS: DEFINITIONS

[Compact Goal: Reduce poverty through economic growth]

Indicator	Definition
Crop income (Northern Zone) (US$)	Net income per household from growing yams, sorghum and groundnuts (as proxies of the most likely crops grown).[2] Northern Zone is comprised of the following five districts: Savelugu Nanton, Tolon Kumbungu, Tamale, West Mamprusi and Karaga.

COMPACT GOAL INDICATORS: DEFINITIONS—Continued

[Compact Goal: Reduce poverty through economic growth]

Indicator	Definition
Crop income (Afram Basin Zone—East) (US$)	Net income per household from growing maize, yams and cassava (as proxies of the most likely crops grown). Afram Basin Zone—East is comprised of the following two districts: Fanteakwa and Kwahu South.
Crop income (Afram Basin Zone—West) (US$)	Net income per household from growing maize, yams and cassava (as proxies of the most likely crops grown). Afram Basin Zone—West is comprised of the following four districts: Ejura Sekyedumasi, Afram Plains, Sekyere East and Sekyere West.
Crop income (Southern Zone) (US$)	Net income per household from growing pineapples and vegetables (as proxies of the most likely crops grown). Southern Zone is comprised of the following twelve districts: Gomoa, Awutu Efutu Senya, Akuapim South, Manya Krobo, Dangme West, Yilo Krobo, North Dayi, Hohoe, Ketu, Keta, South Tongu and Akatsi.
Aggregate poverty gap of beneficiaries (US$)	Income value at the poverty line minus average income of beneficiaries, multiplied by the number of beneficiaries, disaggregated by each Intervention Zone. Income value at the poverty line is defined by the Ghana Statistical Service's Ghana Living Standards Survey. The fifth round of this survey was conducted in 2006.

[2] Data will be reported on actual crops grown in all Intervention Zones. Proxies were used to estimate baseline and target values.

COMPACT GOAL INDICATORS: BASELINES AND TARGETS

[Compact Goal: Reduce poverty through economic growth]

Indicator	Targets/Year					
	Baseline	1	2	3	4	5
Crop income (Northern Zone) (US$)	[3] $700	.....	.....	.....	.....	[4] 135% increase over baseline.
Crop income (Afram Basin Zone—East) (US$)	[5] 820	.....	.....	.....	.....	[6] 55% increase over baseline.
Crop income (Afram Basin Zone—West) (US$)	[7] 540	.....	.....	.....	.....	[8] 42% increase over baseline.
Crop income (Southern Zone) (US$)	[9] 1,860	.....	.....	.....	.....	[10] 33% increase over baseline.
Aggregate poverty gap of beneficiaries (US$)	TBD	TBD (during the second quarter of 2007)				

[3] Baseline assumes that 2 hectares are cultivated.
[4] Target assumes that 2.2 hectares are cultivated.
[5] Baseline assumes that 1 hectare is cultivated.
[6] Target assumes that 1.1 hectares are cultivated.
[7] Baseline assumes that 1 hectare is cultivated.
[8] Target assumes that 1.1 hectares are cultivated.
[9] Baseline assumes that 2 hectares are cultivated.
[10] Target assumes that farmers transition from maize, yam and cassava production to 2 hectares of pineapple and 1 hectare of vegetable cultivation.

(ii) Objective Indicators and Outcome Indicators. The M&E Plan shall contain the Objective Indicators and Outcome Indicators and their definitions, as listed in the tables below. The corresponding Targets to be achieved are in the tables following the definitions.

OBJECTIVE INDICATORS: DEFINITIONS

Indicator	Definition
Objective: Increase production and productivity of high-value cash and food crops in the Intervention Zones in Ghana.	
Production of staple crops (metric tons)	Metric tons of maize, yams, cassava and groundnuts (as proxies of most likely crops grown) grown and produced by the FBOs participating in the Program.
Production of high-value crops (metric tons)	Metric tons of pineapple (as proxy of most likely crop grown) grown and produced by the FBOs participating in the Program, of which 60% are for export markets and 40% for domestic markets.
Productivity of land (metric tons/hectare): maize	Metric tons/hectare of maize (as proxy of most likely crop grown) grown and produced.
Productivity of land in the Northern Zone (metric tons/hectare): yams.	Metric tons/hectare of yam (as proxy of most likely crop grown) grown and produced.
Productivity of land (metric tons/hectare): export-grade pineapple.	Metric tons/hectare of pineapple (as proxy of most likely crop grown) grown and produced.
Objective: Enhance the competitiveness of high-value cash and food crops in local and international markets.	
Additional Ghanaian agriculture exports (metric tons): pineapple.	Additional metric tons of pineapple (as proxy of most likely crop exported) exported.

OBJECTIVE INDICATORS: DEFINITIONS—Continued

Indicator	Definition
Additional Ghanaian agriculture exports (metric tons): Asian vegetables.	Additional metric tons of Asian vegetables (as proxy of most likely crop exported) exported.
The ratio of (i) price of Ghanaian imported into European markets (Euro/kg) to (ii) price of non-Ghanaian imported into European market (Euro/kg).	Price (including cost of Cargo, Insurance and Freight) of pineapple (as proxy of most likely crop exported), imports into the European markets from Ghana, divided by price (including cost of Cargo, Insurance and Freight) of pineapple imported into the European markets from countries other than Ghana. Import data will be based on information published by Eurostat.

OBJECTIVE INDICATORS: BASELINES AND TARGETS

Indicator	Year					
	Baseline	1	2	3	4	5
Objective: Increase production and productivity of high-value cash and food crops in the Intervention Zones in Ghana.						
Production of staple crops (metric tons).	430,000	.....	.....	1% increase over baseline.	4% increase over baseline.	11% increase over baseline.
Production of high-value crops (metric tons).	225,000	.....	2% increase over baseline.	5% increase over baseline.	16% increase over baseline.	50% increase over baseline.
Productivity of land (metric tons/hectare): maize.	1.9	.....	.....	1% increase over baseline.	4% increase over baseline.	12% increase over baseline.
Productivity of land in the Northern Zone (metric tons/hectare): yams.	7	.....	.....	61% increase over baseline.	65% increase over baseline.	75% increase over baseline.
Productivity of land (metric tons/hectare): export-grade pineapple.	8	.....	.....	1% increase over baseline.	8% increase over baseline.	26% increase over baseline.
Objective: Enhance the competitiveness of high-value cash and food crops in local and international markets.						
Additional Ghanaian agriculture exports (metric tons): pineapple.	0	.....	.....	8,300	14,500	21,700.
Additional Ghanaian agriculture exports (metric tons): Asian vegetables.	0	.....	.....	1,344	2,192	3,178.
The ratio of (i) price of Ghanaian imports into European markets (Euro/kg) to (ii) price of non-Ghanaian imports into European market (Euro/kg).	0.75	.....	.....	0.75	0.78–0.81	0.81–0.88.

OUTCOME INDICATORS: DEFINITIONS

[Agriculture Project]

Indicator	Definition
Number of farmers adopting new technologies and farming methods.	Number of farmers in the FBOs participating in the Program that adopt new technologies methods and farming methods, assuming an 85% adoption rate.
Percentage of post harvest loss at farmgate (metric lost/metric tons produced).	(i) Metric tons of post harvest lost, divided by (ii) metric tons of total harvest tons produced at the farmgate.
SMEs processing products and/or providing inputs to farmers.	TBD.
Irrigation Activity:	
Number of hectares irrigated	Number of hectares irrigated as a result of the Program.
Land Activity:	
Number of days to conduct a land transaction	Number of days to purchase, rent or sell a parcel of land from initiation of negotiation with current landowner to registration in title or deeds registry of the property right acquired.
Number of land disputes in the pilot registration districts.	Number of land disputes encountered during inventory of land rights for the pilot registration districts and on record at the relevant district courts as of Entry into Force, disaggregated by region.
Registration of land rights in the pilot registration districts.	Percentage of targeted parcels registered in the title registry.
Post-Harvest Activity:	
Volume of products passing through post-harvest treatment (metric tons).	Metric tons of pineapple, among other crops, passing through small-scale storage facilities, packhouse pre- coolers or packhouses.
Credit Activity:	
Portfolio-at-risk of agricultural loan fund	Share of value of all loans disbursed from the agricultural loan that have one or more fund installments of principal or interest past due over thirty (30) days, disaggregated by short-term and medium-term loans.

OUTCOME INDICATORS: DEFINITIONS—Continued

[Agriculture Project]

Indicator	Definition
Value of loans disbursed to clients from agricultural loan fund (US$).	Value of loans disbursed from the agricultural loan fund for on-farm and off-farm investment by institutions (including financial institutions, input suppliers, etc.), disaggregated by short-term and medium-term loans.
Number of additional loans	Number of loans disbursed from the agricultural loan fund for on-farm and off-farm investment by institutions (including financial institutions, input suppliers, etc.), disaggregated by short-term and medium-term loans.
Feeder Roads Activity:	
Vehicle operating costs (on roads requiring minor rehabilitation).	Vehicle operating costs including both operation and maintenance costs and travel time, disaggregated by road segment. Minor rehabilitation consists of re- gravelling (i.e., change from poor gravel to improved gravel surface).
Vehicle operating costs (on roads requiring medium rehabilitation).	Vehicle operating costs including both operation and maintenance costs and travel time, disaggregated by road segment. Medium rehabilitation consists of upgrading road surface from average gravel to bitumen surface.
Vehicle operating costs (on roads requiring major rehabilitation).	Vehicle operating costs including both operation and maintenance costs and travel time, disaggregated by road segment. Major rehabilitation consists of upgrading road surface from poor gravel to bitumen surface.

OUTCOME INDICATORS: DEFINITIONS

[Transportation Project]

Indicator	Definition
N–1 Activity:	

OUTCOME INDICATORS: DEFINITIONS

[Transportation Project]

Indicator	Definition
Volume capacity ratio	Number of vehicles on road divided by the number of vehicles at road capacity.
Vehicles per hour at peak hour.	Number of vehicles on road, disaggregated by vehicle type, at peak traffic hour.
Travel time at peak hour	Travel time in minutes to traverse the 14 kilometers of road upgraded at peak traffic hour.
International roughness index.	Road-surface quality measure (meters in height per kilometers distance).
Trunk Roads Activity:	
Annual average daily traffic.	Number of vehicles per day adjusted for time-of-day and seasonal differences for each road, disaggregated by vehicle type. Rate of increase in traffic volume is in addition to the estimated growth rate in traffic of 6%.
International roughness index (of roads requiring minor rehabilitation).	Road-surface quality measure (meters in height per kilometers distance) for each road. Minor rehabilitation consists of re-gravelling (*i.e.*, change from poor gravel to improved gravel surface).
International roughness index (of road requiring major rehabilitation).	Road-surface quality measure (meters in height per kilometers distance) for each road. Major rehabilitation consists of upgrading road surface from poor gravel to bitumen surface.
Ferry Activity:	
Travel time for walk-on passengers and small vehicles.	Average time spent by walk-on passengers and small vehicles to cross Volta River, including time spent waiting to board ferry and to on- and off-load.
Travel time for trucks	Average time spent by trucks to cross Lake Volta, including time spent waiting to board ferry and to on- and off-load.
Annual average daily traffic (vehicle).	Number of vehicles per day, adjusted for time-of-day and seasonal differences, disaggregated by vehicles type.
Annual average daily traffic (passengers).	Number of passengers per day, adjusted for time-of-day and seasonal differences.

OUTCOME INDICATORS: DEFINITIONS

[Rural Development Project]

Indicator	Definition
Procurement Capacity Activity:	
Time per procurement	Amount of time to execute contract award from the point of receiving a requirement for processing to contract award, disaggregated by the size of each award as follows: (i) US$ 2,500 and below, (ii) US$ 2,501–US$ 10,000, (iii) US$ 10,001–US$ 100,000, (iv) US$ 100,001–US$ 500,000 and (v) US$ 500,001 and above.

OUTCOME INDICATORS: DEFINITIONS—Continued

[Rural Development Project]

Indicator	Definition
Quality of procurement	A randomly-selected sample of procurements will be evaluated each year to assess the outcomes of the procurements as compared to the outcomes of similar procurements in the districts not participating in the Program.
Community Services Activity:	
Local Government Service Delivery Sub-Activity:	
Score card of citizen satisfaction with services.	TBD.
Education Facilities Sub-Activity:	
Gross enrollment rates	Number of students enrolled in school divided by the number of individuals of appropriate school age, in the relevant district (or other area).
Gender parity in school enrollment.	Number of females enrolled in school divided by the number of males enrolled in school.
Water and Sanitation Facilities Sub-Activity:	
Distance to collect water	Distance between house and water source in kilometers.
Time to collect water	Time spent collecting water, including travel and waiting time.
Distance to sanitation facility.	Distance between house and sanitation facility in kilometers.
Travel time to sanitation facility.	Time spent traveling to and waiting at sanitation facility.
Incidence of guinea worm, diarrhea or bilharzia.	Number of individuals suffering from illness attributed to guinea worm, diarrhea and bilharzia divided by the number of individuals, in the relevant district (or other area).
Average number of days lost due guinea worm, diarrhea or bilharzia.	Number of days spent accessing treatment and recovering from illness attributed to guinea worm, diarrhea or bilharzia.
Rural Electrification Sub-Activity:	
Percentage of households, schools and agricultural processing plants in target districts with electricity.	Number of houses, schools and agricultural processing plants with electricity connections divided by the total number of households, schools, and agricultural processing plants in the relevant district (or other processing area).
Financial Services Activity:	
Number of inter-bank transactions.	Number of checks received by rural banks plus number of remittances received by rural banks.
Value of deposit accounts in rural banks.	Cedi value of total deposits in rural banks.

OUTCOME INDICATORS: BASELINES AND TARGETS

[Agriculture Project]

Indicator	Targets / year					
	Baseline	1	2	3	4	5
Commercial Training Activity:						
Number of farmers adopting new technologies and farming methods.	0	.....	5,100	12,750	15,300	17,850.
Percentage of post harvest lost at farmgate (metric tones lost/metric tons produced).	20%	.....	10–14%	10–14%	10–14%	10–14%.
SMEs processing products and/or providing inputs to farmers.	TBD			TBD		
Irrigation Activity:						
Number of hectares irrigated	0	0	280	1,100	1,720	1,960.
Land Activity:						
Number of days to conduct a land transaction.	TBD	.....	50% decrease from baseline.	67% decrease from baseline.		
Number of land disputes in the pilot registration districts.	TBD	.....	.....	30% decrease from baseline.	.....	50% decrease from baseline.
Registration of land rights in the pilot registration districts.	TBD	.....	.....	30% increase from baseline.	.....	100% increase from baseline.
Post-Harvest Activity:						

OUTCOME INDICATORS: BASELINES AND TARGETS—Continued

[Agriculture Project]

Indicator	Targets / year					
	Baseline	1	2	3	4	5
Volume of products passing through post-harvest treatment (metric tons).	0	.....	111,820	129,900	143,400..	
Credit Activity:						
Portfolio-at-risk of agricultural loan fund.	0%	.....	20%	20%	20%	20%.
Value of loans disbursed to clients from agricultural loan fund(US$).	0	.....	4,500	12,000	14,500	17,000.
Number of additional loans	0	.....	5,000	13,000	15,500	18,000.
Feeder Roads Activity:						
Vehicle operating costs (on roads requiring minor rehabilitation).	TBD	.....	.....	20% decrease from baseline.	20% decrease from baseline.	20% decrease from baseline.
Vehicle operating costs (on roads requiring medium rehabilitation).	TBD	.....	.....	30% decrease from baseline.	30% decrease from baseline.	30% decrease from baseline.
Vehicle operating costs (on roads requiring major rehabilitation).	TBD	.....	.....	40% decrease from baseline.	40% decrease from baseline.	40% decrease from baseline.

OUTCOME INDICATORS: BASELINES AND TARGETS

[Transportation Project]

Indicator	Targets / year					
	Baseline	1	2	3	4	5
N–1 Activity:						
Volume capacity ratio	0.85–1	.....	.....	.....	.....	0.26.
Vehicles per hour at peak hour	>2000	.....	.....	.....	.....	3,120.
Travel time at peak hour	60 minutes	.....	.....	.....	.....	20 minutes.
International roughness index	TBD	.....	.....	.....	.....	2.5.
Trunk Roads Activity:						
Annual average daily traffic	570	.....	.....	.....	35% increase in traffic volume.	35% increase in traffic volume.
International roughness index (of roads requiring minor rehabilitation).	9–12	.....	.....	6.0	6.0	6.0.
International roughness index (of roads requiring major rehabilitation).	9–12	.....	.....	3.5	3.5	3.5.
Ferry Activity:						
Travel time for walk-on passengers and small vehicles.	150 minutes	TBD				
Travel time for trucks	370 minutes	TBD				
Annual average daily traffic (vehicle)	53	TBD				
Annual average daily traffic (passenger).	541	TBD				

OUTCOME INDICATORS: BASELINES AND TARGETS

[Rural Development Project]

Indicator	Baseline	Targets/years				
		1	2	3	4	5
Procurement Capacity Activity:						
Time per procurement ..... Quality of procurement	TBD	TBD				
Community Services Activity:						
Local Government Service Delivery Sub-Activity:						
Score card of citizen satisfaction with services	TBD	TBD				
Education Facilities Sub-Activity:						
Gross enrollment rates ..... Gender parity in school enrollment	TBD	TBD (during the second quarter of 2007)				

OUTCOME INDICATORS: BASELINES AND TARGETS—Continued

[Rural Development Project]

Indicator	Baseline	Targets/years				
		1	2	3	4	5
Water and Sanitation Facilities Sub-Activity:						
Distance to collect water Time to collect water Distance to sanitation facility Travel time to sanitation facility Incidence of guinea worm, diarrhea or bilharzia Average number of days lost due guinea worm, diarrhea or bilharzia	TBD	TBD (during the second quarter of 2007)				
Rural Electrification Sub-Activity:						
Percentage of households, schools and agricultural processing plants in target districts with electricity.	TBD	TBD (during the second quarter of 2007)				
Financial Services Activity:						
Number of inter-bank transactions Value of deposit accounts in rural banks	210,000 1,680 billion Cedis.	TBD (during the second quarter of 2007)				

(iii) The M&E Plan will also include a number of activity-level measures that will track progress toward realizing the direct outputs of the Projects and Project Activities. Examples of the indicators likely to be included in the M&E Plan are:

(1) Number of farmers receiving commercial training;

(2) Number of irrigation facilities built; and

(3) Kilometers of road upgraded.

(b) *Beneficiaries.* The M&E Plan shall describe the Beneficiaries in detail, including the expected number of beneficiaries, their income, gender and other general demographic characteristics.

(c) *Data Collection and Reporting.* The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. In addition, MiDA shall conduct regular assessments of Program performance to measure progress on the Compact Goal and the Objectives, and to alert all Parties to any problems in implementation of the Program. These assessments will report actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and describe any planned actions to address performance problems. MiDA shall promptly deliver any data or reports it receives to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC, and will make these assessments available to the public on their Web site.

(d) *Data Quality Reviews.* As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as reliable, timely and valid as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where consistent levels of quality are not possible, given in-country capacity or other constraints.

3. Evaluation Component

The Program shall be evaluated on the extent to which the Projects contribute to the Compact Goal and Objectives. The Evaluation Component shall contain the methodology for conducting the most rigorous impact evaluations feasible and cost-effective, as well as the process and timeline for analyzing data. The Evaluation Component shall contain two types of reports: a Final Evaluation and Project, Project Activity, or Interim Evaluations.

(a) *Final Evaluation.* MCC will engage an independent evaluator to conduct an evaluation of the Program at the expiration or early termination of the Program (''Final Evaluation''). The evaluation methodology, timeline, data collection, and analysis requirements will be finalized and detailed in the M&E Plan. The Final Evaluation shall, at a minimum, (i) estimate quantitatively and in a statistically valid way, the causal relationship between the Compact Goal (to the extent possible), the Objectives and Outcomes; (ii) determine if, and analyze the reasons why, the Compact Goal, Objectives and Outcomes were or were not achieved; and (iii) assess the overlapping benefits of the Projects.

(b) *Project, Project Activity or Interim Evaluations.* The Evaluation Component in the M&E Plan will also describe other individual Project, Project Activity, or interim evaluations (''Interim Evaluations''). The evaluation methodology, timeline, data collection, and analysis requirements will be finalized and detailed in the M&E Plan. Determination of the evaluation methodologies will be condition precedent for certain MCC Disbursements as provided in the Disbursement Agreement.

(c) *Ad Hoc Evaluations or Special Studies.* In addition to the evaluations described in the M&E Plan, MCC may require ad hoc evaluations or special studies prior to the expiration of the Compact Term. If MiDA engages an evaluator, the evaluator shall be an externally contracted independent source, subject to the prior written approval of MCC, for terms of reference and final selection, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MiDA requires an ad hoc independent evaluation or

special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MiDA resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring Component and the Evaluation Component, the M&E Plan shall include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) *Costs.* A detailed annual budget estimate for all components of the M&E Plan.

(b) *Assumptions and Risks.* Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Outcomes; provided such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) *Approval and Implementation.* The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with this M&E Annex, and any other relevant Supplemental Agreement or Implementation Document. A review of the completed portions of the M&E Plan by the Board of MiDA shall be required prior to the expiration of the first year of the Program. Review and approval of the M&E Plan shall be completed by time specified in the Disbursement Agreement.

(b) *MCC Disbursement for a Project Activity.* As a condition to certain MCC Disbursements as provided in the Disbursement Agreement, there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements. In addition, for certain activities, collection of baseline data will be condition precedent for certain MCC Disbursements as provided in the Disbursement Agreement.

(c) *Modifications.* Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, the Parties may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending this Compact; *provided*, any such modification or amendment of the M&E Plan shall be reviewed by the Board of MiDA and approved by MCC in writing, and is otherwise consistent with the requirements of this Compact and its Objectives, and any relevant Supplemental Agreement between the Parties.

[FR Doc. 06–6914 Filed 8–18–06; 8:45 am]

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Federal Register

Monday,
August 21, 2006

Part V

Environmental Protection Agency

40 CFR Parts 49 and 51
Review of New Sources and Modifications in Indian Country; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 51

[EPA–HQ–OAR–2003–0076; FRL–8210–4]

RIN 2060–AH37

Review of New Sources and Modifications in Indian Country

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (the Act) for tribes in Indian country. The FIP would include two basic air quality regulations for the protection of communities in Indian country. The first rule would apply to minor stationary sources and minor modifications at major stationary sources in Indian country (minor NSR rule). The second rule would apply to all new major stationary sources and major modifications located in areas of Indian country that are designated as not attaining the National Ambient Air Quality Standards (NAAQS) (nonattainment major NSR rule). These rules would be implemented by EPA, or a delegate tribal agency assisting EPA with administration of the rules, until replaced by an EPA-approved tribal implementation plan for an area of Indian country.

DATES: *Comments.* Comments must be received on or before November 20, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before September 20, 2006.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by September 11, 2006, we will hold a public hearing. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0076, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2003–0076, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room B–102, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2003–0076. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0076. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to I C & D of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Raj Rao, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–5344, facsimile number (919) 541–5509, electronic mail e-mail address: *rao.raj@epa.gov.* To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–0641, facsimile number (919) 541–5509, electronic mail e-mail address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this proposed action include owners and operators of emission sources in all industry groups located in Indian country, EPA, and tribal governments that are delegated administrative authority to assist EPA with the implementation of these Federal regulations. Categories and entities potentially affected by this action are expected to include:

Category	NAICS [a]	Examples of regulated entities
Industry	4471	Gasoline station storage tanks and refueling.
	5614	Lumber manufacturer support.
	21211	Coal mining.
	31332	Surface coating operation.
	33712	Furniture manufacture.
	56221	Medical waste incinerator.
	115112	Repellent and fertilizer applications.
	211111	Natural gas plant.
	211111	Oil and gas production.
	211112	Fractionation of natural gas liquids.
	212234	Copper mining and processing.
	212312	Stone quarrying and processing.
	212313	Stone quarrying and processing.
	212321	Sand and gravel production.
	221112	Power plant-coal-fired.
	221119	Power plant-biomass fueled.
	221119	Power plant-landfill gas fired.
	221210	Natural gas collection.
	221210	Natural gas pipeline.
	321113	Sawmill.
	321911	Window and door molding manufacturer.
	323110	Printing operations.
	323113	Surface coating operations.
	324121	Asphalt hot mix plants.
	325188	Elemental phosphorus plant.
	325188	Sulfuric acid plant.
	331314	Secondary aluminum production and extrusion.
	331492	Cobalt and tungsten recycling.
	332431	Surface coating operations.
	332812	Surface coating operations.
	421320	Concrete batching plant.
	422510	Grain elevator.
	422710	Crude oil storage and distribution.
	422710	Gasoline bulk plant.
	486110	Crude oil storage and distribution.
	486210	Natural gas compressor station.
	562212	Solid waste landfill.
	811121	Automobile refinishing shop.
	812320	Dry cleaner.
Federal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.
State/local/tribal government	924110	Administration of Air and Water Resources and Solid Waste Management Programs.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in the proposed minor and major NSR programs for Indian country, proposed 40 CFR 49.153 and 49.168, respectively. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0076.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the WWW. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr* and on the tribal air home page at *http://www.epa.gov/oar/tribal.*

D. How Can I Find Information About a Possible Hearing?

Persons interested in presenting oral testimony should contact Ms. Pamela Long, New Source Review Group, Air Quality Policy Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0641 or e-mail *long.pam@epa.gov* at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules.

E. Overview of Rule

In this rulemaking, we [1] are proposing to fill a regulatory gap that currently exists in Indian country. We are proposing two new source review (NSR) rules under which the reviewing authority will issue pre-construction permits for certain stationary sources of air pollution in Indian country. These proposed rules would provide additional regulatory tools for us to use in implementing the Act in Indian country. The minor NSR rule would apply to new and modified minor sources and to minor modifications at major stationary sources. Sources subject to this rule would apply control technology, if any, as determined by the reviewing authority on a case-by-case basis. In rare instances at the discretion of the reviewing authority, such sources may also be required to submit an air quality analysis as part of their permit application. We are proposing to establish minor NSR thresholds so that only minor sources with a potential to emit (PTE) equal to or higher than these thresholds would be subject to this rule. Additionally, this rule would allow otherwise major stationary sources in Indian country to voluntarily accept emission limitations on their PTE to become ''synthetic minor sources.'' Such synthetic minor sources would include sources that emit hazardous air pollutants (HAP). In such a case, they would not be subject to major source MACT regulations under 40 CFR part 63. Any limitations on PTE must be enforceable as a practical matter (that is, legally and practically enforceable).

Under the nonattainment major NSR rule, affected sources would be required to comply with the provisions of 40 CFR part 51, appendix S, a transitional rule which generally applies to areas that do not have a State Implementation Plan (SIP). Sources subject to this rule would be subject to requirements for Lowest Achievable Emission Rate (LAER) control technology, emissions offsets, compliance certification, and net air quality benefit analysis. Due to the limited number of sources in Indian country, offsets are not generally available. We have proposed options for addressing the lack of availability of offsets in Indian country.

The information presented in this preamble is organized as follows:

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
C. Where Can I get a Copy of This Document and Other Related Information?
D. How Can I Find Information About a Possible Hearing?
E. Overview of Rule.
II. Purpose
III. Background
A. The New Source Review (NSR) Program
1. What are the general requirements of the major NSR program?
2. What are the general requirements of the minor NSR program?
B. Status of Air Quality Programs in Indian Country
C. Consultation With Tribal Representatives
IV. Proposed Rules for Indian Country
A. Minor NSR Program
1. What is a minor source and which minor sources are subject to this rule?
2. What is a modification and what modifications are subject to this rule?
3. What are the minor NSR thresholds and how did we develop them?
4. Are any emissions units and activities at stationary sources exempt from this rule?
5. What are the permit application, control technology, and air quality analysis requirements, and what is the permit issuance process?
6. When are modifications subject to this rule?
7. Why do we believe that an allowable-to-allowable test is appropriate for minor sources?
8. Is your existing minor source subject to this rule?
9. How are ''synthetic minor sources'' subject to this rule?
10. How would section 112(g) case-by-case MACT determinations be addressed by this rule?
11. What are the proposed requirements for public participation in the permitting process?
12. What are the monitoring, recordkeeping, and reporting requirements?
13. What are the criteria for general permits, what source categories generally qualify for them, and what are the permit application requirements for a general permit?
14. What is the administrative and judicial review process proposed for this program?
B. Major NSR Program in Nonattainment Areas of Indian Country
1. What are the requirements for major source permitting under appendix S?
2. What are the options we are proposing to address the lack of available offsets in Indian country?
3. What are the proposed public participation requirements for this program?
4. How do I meet the statewide compliance certification requirement of the Act?
V. Legal Basis, Statutory Authority, and Jurisdictional Issues
A. What is the basis for our authority to implement these programs?
B. How does a tribe receive delegation to assist EPA with administration of the Federal minor and major NSR rules?
C. What happens to permits previously issued by States to sources in Indian country?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
J. National Technology Transfer Advancement Act
VII. Statutory Authority

II. Purpose

The purpose of today's rulemaking is to ensure that air resources in Indian country will be protected in the manner intended by the Act as amended in 1990 by establishing a permitting program for

[1] In this proposal, the term ''we'' refers to the EPA and the term ''you'' refers to stationary sources of air pollution and their owners and operators.

stationary sources in Indian country. Currently in Indian country, there is no permitting mechanism for new or modified minor sources; minor modifications at major sources; or new major stationary sources or major modifications of regulated NSR pollutants in nonattainment areas. In addition, there is no minor source permitting mechanism for major stationary sources looking to voluntarily limit emissions to become synthetic minor sources [2] or for approving case-by-case maximum achievable control technology (MACT) determinations. Today's proposed rules will fill this regulatory gap and provide regulatory certainty to allow for environmentally sound economic growth in Indian country. By establishing this FIP for Indian country, we will provide more consistency with the requirements and programs of the States and thus create a more level regulatory playing field for owners and operators within and outside of Indian country. We are proposing these permit programs pursuant to section 110(a)(2)(C), part D of title I, and section 301(d) of the Act.

III. Background

A. The New Source Review (NSR) Program

1. What are the general requirements of the major NSR program?

The major NSR program contained in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at such sources. In areas not meeting health-based NAAQS and in ozone transport regions (OTR), the program is implemented under the requirements of part D of title I of the Act. We call this program the ''nonattainment'' major NSR program. In areas meeting the NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), the NSR requirements under part C of title I of the Act apply. We call this program the Prevention of Significant Deterioration (PSD) program. Collectively, we also commonly refer to these programs as the major NSR program. These rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendices S and W.

For newly constructed, ''greenfield'' sources, the determination of whether a source is subject to the major NSR program is based on the source's PTE. The Act, as implemented by our rules, sets applicability thresholds for major sources in nonattainment areas. These thresholds are 100 tons per year (tpy) of any pollutant subject to regulation under the Act, or smaller amounts, depending on the nonattainment classification. For attainment areas the thresholds are 100 or 250 tpy, depending on the source type. A new source with a PTE at or above the applicable threshold amount ''triggers,'' or is subject to, major NSR.

For existing major sources, major NSR applies to a ''major modification.'' For a modification to be major, the following three criteria have to be met:

(1) A physical change in or change in the method of operation of a major stationary source must occur;

(2) The increase in emissions resulting from this change must be significant (equal to or above the significance levels defined in 40 CFR 52.21(b)(23)); and

(3) The increase in emissions resulting from the change must be a significant net emissions increase. In other words, when the increase from the project is added to other contemporaneous increases or decreases in actual emissions [3] at the source, the net emissions increase must be significant (equal to or above the significance levels defined in 40 CFR 52.21(b)(23)).

Major sources and major modifications subject to nonattainment major NSR must apply state-of-the-art emissions control technologies, including any pollution prevention measures, to achieve the LAER. The LAER is based on the most stringent emission limitation in the implementation plan of any State, or achieved in practice, for the source category under review.

Each major source subject to nonattainment major NSR must also ''offset'' its emissions increase by obtaining emissions reductions from other sources in the area, or in an area of equal or higher nonattainment classification that contributes to nonattainment in the subject source's area. The ratio of the offset relative to the proposed increase must be at least one-to-one and is based on the severity of the area's nonattainment classification. For ozone and particulate matter less than 10 microns in aerodynamic diameter (PM–10), the more polluted the air is where the source is locating or expanding, the greater is the required offset ratio. The emissions reductions to be used as offsets must be surplus (not otherwise required by the Act), quantifiable, federally enforceable, and permanent. *See* sections 173(a) and (c) of the Act and 40 CFR 51.165(a)(3).

Additionally, each major nonattainment NSR permit applicant must also conduct an analysis of ''alternative sites, sizes, production processes, and environmental control techniques demonstrating that the benefits of the proposed emissions source significantly outweigh the environmental and social costs of its location, construction, or modification.'' Moreover, each major nonattainment NSR permit applicant must demonstrate that all other major stationary sources under her/his control in the same State are in compliance or on a schedule of compliance with all emission limitations and standards of the Act.

Under the PSD program for attainment areas, a major source or modification must apply Best Available Control Technology (BACT), which may be based on pollution prevention techniques. In addition, the source must analyze the impact of the project on ambient air quality to assure that no violation of the NAAQS or PSD increments will result, and must analyze impacts on soil, vegetation, and visibility. Sources or modifications that would impact Class I areas (*e.g.*, national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas.

2. What are the general requirements of the minor NSR program?

Section 110(a)(2)(C) of the Act requires that every SIP include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, to ensure attainment and maintenance of NAAQS. Parts C and D address the major NSR program for major stationary sources, and the permitting program for minor stationary sources is addressed by section 110(a)(2)(C) of the Act. We commonly refer to the latter program as the ''minor NSR'' program. A minor stationary source means a source whose PTE is lower than the major source applicability threshold for a particular pollutant as defined in the applicable nonattainment major NSR program or PSD program.

[2] Sources located within the exterior boundaries of Indian reservations in Idaho, Oregon, and Washington can apply for a non-Title V operating permit to establish synthetic minor status under the FIP established for those reservations. *See* 40 CFR 49.139 and 40 CFR part 49, subpart M.

[3] In approximate terms, ''contemporaneous'' emissions increases or decreases are those that have occurred between the date 5 years immediately preceding the proposed physical or operational change and the date that the increase from the change occurs. *See,* for example, 40 CFR 52.21(b)(3)(ii).

The Federal requirements for minor source programs are outlined 40 CFR 51.160 through 51.164. States must develop minor source programs to attain and maintain NAAQS. The Federal regulations for minor source programs are considerably less detailed than the requirements for major sources. As a result, there is a wider variety of programs and requirements for these ''nonmajor'' preconstruction activities.

Section 110(a)(2)(C) of the Act provides us with a broad degree of discretion in developing a program to regulate new and modified minor stationary source construction activities in Indian country.

B. Status of Air Quality Programs in Indian Country

As we have discussed in previous rulemaking actions which affect Indian country, in the absence of an EPA-approved program, we are authorized to develop a FIP to protect air quality by directly implementing provisions of the Act throughout Indian country. *See, e.g.*, 59 FR 43958–61 (August 25, 1994), 63 FR 7262–64 (February 12, 1998), and 62 FR 13750 (March 21, 1997). Previously, we had already promulgated rules establishing requirements for major stationary sources in attainment areas and have issued PSD permits in Indian country (*See* 40 CFR 52.21).

Under the Act and the Tribal Authority Rule (TAR) (*See* 40 CFR part 49, subpart A), eligible tribes may seek approval of their own PSD programs for their reservations and/or for other areas under their jurisdiction. Currently, no tribe is administering an EPA-approved PSD program. Therefore, we implement the PSD program in Indian country. Unlike for the PSD program, there is currently no FIP to implement either the nonattainment major NSR program or the minor NSR program in Indian country. Hence, there is a regulatory gap in Indian country. Today's proposed rule will allow us to fully implement the NSR program in Indian country. We are proposing the minor NSR program at 40 CFR 49.151 through 49.165 and the nonattainment major NSR program at 40 CFR 49.166 through 49.175. It is important to recognize, however, that even if we adopt a Federal program that applies in Indian country, the tribes may still develop Tribal Implementation Plans (TIPs), similar to SIPs, to implement these programs. If a tribe develops a TIP to implement NSR, the TIP, once it is approved, will replace the Federal program as the requirement for that area of Indian country and the tribe will become the reviewing authority.

Sources that obtain enforceable emission limitations can avoid major source status by reducing their PTE below the applicable major source thresholds. Such sources are commonly referred to as ''synthetic minors.'' The practice of creating synthetic minor sources to avoid major NSR and title V is common under most State and local minor NSR permitting programs. However, outside of Idaho, Oregon, and Washington, no such minor source permitting mechanism is currently available in Federal regulations for Indian country.[4] We therefore believe that inclusion of this provision in the proposed rules would significantly benefit large sources in Indian country by providing them with a means to legally avoid more stringent major NSR rules otherwise required by title I of the Act. We are establishing this mechanism for both stationary sources of regulated NSR pollutants and HAPs.

C. Consultation With Tribal Representatives

Prior to undertaking this rulemaking, we sought to include tribes early in the rulemaking process. On June 24, 2002, we sent approximately 500 letters to tribal leaders seeking their recommendations for effective consultation and their involvement in developing this rule.

We received responses from 75 tribes. Of these 75 tribes, 69 designated an environmental staff member to work with us on developing the rules. Aside from the designated staff, many tribal leaders asked that we keep them informed of our progress through e-mail, meetings with the EPA Regional Offices, newsletters, and Web sites. However, 53 percent of the tribal leaders also requested direct phone calls or conference calls to discuss the subject. Only 16 percent of the respondents requested face-to-face consultation. Of these, only six tribes requested senior EPA staff to meet with tribal leaders.

As a result of this feedback, we developed a consultation plan that included three meetings held at the reservations of the Menominee Tribe in Wisconsin, the Mohegan Tribe in Connecticut, and the Chehalis Tribe in Washington. A fourth meeting was held in conjunction with the Institute of Tribal Environmental Professionals' (ITEP) 10th anniversary meeting in Flagstaff, Arizona. In addition to conducting these meetings, we also visited tribal environmental staff in Indian country. Over 30 tribes attended these meetings. As part of our outreach efforts to the tribes, we participated in numerous national and regional forums including the National Tribal Forums sponsored by the ITEP, two National Tribal Air Association meetings, and at meetings with tribal consortia, such as the National Tribal Environmental Council, United Southern and Eastern Tribes, Inter-Tribal Environmental Council, Inter Tribal Council of Arizona, and others.

Although much of our effort focused on outreach to the tribes, we also interacted with State and local air pollution control agencies during development of this rule. We had two meetings with the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officers (STAPPA/ALAPCO) to present the draft rules.

IV. Proposed Rules for Indian Country

A. Minor NSR Program

Today's action proposes provisions for a minor NSR program in Indian country. We propose to codify these provisions at 40 CFR 49.151 through 49.165. Our primary goal in developing this proposed rule is to ensure that air resources in Indian country will be protected in the manner intended by the Act. In addition, we seek to establish a flexible preconstruction permitting program for minor stationary sources in Indian country that is comparable to that which applies outside of Indian country, in order to create a more level regulatory playing field for owners and operators within and outside of Indian country.

It is important to note, however, that outside of Indian country there is a great deal of variation among State minor NSR permitting programs. As a result, it would be impossible to create a single program that creates precisely equivalent regulations among all areas of Indian country and the surrounding State areas. Instead, we designed the proposed rules to ensure that stationary sources in Indian country would operate with a reasonable level of air pollution control, if necessary, and in such a manner to ensure that air resources in Indian country would be protected.

We are not attempting through this proposed rulemaking to establish a new set of minimum criteria that an eligible tribe, or a State, would need to follow in developing its own minor source permitting program. Rather, this proposal simply represents how we would implement the program in Indian country in the absence of an EPA-approved implementation plan. However, if a tribe is developing its own program, this can serve as one example of a program that meets the objectives

[4] *See* footnote 2 for more information on the FIP that is in place in within the exterior boundaries of Indian reservations in these three States.

and requirements of the Act. We are proposing a minor source permitting program that addresses, on a national level, many environmental and regulatory issues that are specific to Indian country. We understand that States and eligible tribes may face different issues, and may therefore choose to develop different programs for their own State or Tribal Implementation Plans.

1. What is a minor source and which minor sources are subject to this rule?

A minor source means a source whose PTE is lower than an applicable major source threshold. For the NSR program in Indian country, the major source thresholds are defined in the PSD program (*See* 40 CFR 52.21) and in today's proposed nonattainment major NSR program (see proposed 40 CFR 49.167), as applicable, and differ for attainment areas and nonattainment areas for the same pollutant. For example, in attainment areas the major source threshold for Nitrogen Oxides (NO_X) for a source is 250 tpy, unless the source belongs to a source category that is listed in the major NSR rules (*See* 40 CFR 52.21(b)(1)(i)(a)), in which case the major source threshold is 100 tpy. In contrast, the major source threshold for NO_X in ozone nonattainment areas can vary from 10tpy in an extreme ozone nonattainment area to 100 tpy in a marginal ozone nonattainment area. A source can be a major source for some pollutants and a minor source for others.

Today, we are proposing to establish a minor NSR threshold as provided in section IV.A.3 of this preamble. The proposed rule would apply to only those minor sources whose PTE is equal to or greater than the minor NSR threshold for the regulated NSR pollutant. Such sources would include (1) New minor sources, (2) modified minor sources, and (3) synthetic minor sources including HAP sources. A source's PTE for a pollutant is expressed in tpy and generally is calculated by multiplying the maximum hourly emissions rate in pounds per hour (lbs/hr) times 8,760 (which is the number of hours in a year) and dividing by 2,000 (which is the number of pounds in a ton), unless the source is restricted by permit conditions that are enforceable as a practical matter.

Section IV.A.6 of this preamble includes detailed flowcharts to aid you in determining if a proposed new source would be subject to the proposed rule. The flowcharts differentiate between attainment areas and nonattainment areas because the applicability criteria are different for PSD and nonattainment major NSR.

2. What is a modification and what modifications are subject to this rule?

For the purposes of this rule, a modification is defined at proposed 40 CFR 49.152(d) as (any physical or operational change at a stationary source that would cause an increase in the allowable emissions of the affected emissions units for any regulated NSR pollutant or that would cause the emission of any regulated NSR pollutant not previously emitted.(The following exemptions would apply:

- A physical or operational change does not include routine maintenance, repair, or replacement.
- An increase in the hours of operation or in the production rate is not considered an operational change unless such increase is prohibited under any federally-enforceable permit condition or other permit condition that is enforceable as a practical matter.
- A change in ownership at a stationary source is not considered a modification.

Note that this definition differs from the term ''modification'' as used in the major NSR program, primarily in that it is based on an increase in allowable emissions rather than actual emissions. Parts C and D of title I of the Act ''the statutory basis for the major NSR program' refer to section 111(a)(4) of the Act [the definition of ''modification'' for purposes of the new source performance standards (NSPS) program] to define ''modification'' for purposes of the major NSR program. In a recent decision, the D.C. Circuit Court of Appeals ruled that, based on the wording of the definition of ''modification'' in section 111(a)(4) of the Act, the applicability of major NSR to modifications must be based on changes in actual emissions (*State of New York, et al.*, v. *U.S. EPA*, June 24, 2005). However, because the statutory basis for the minor NSR program is section 110(a)(2)(C) of the Act, which does not define or refer to a definition of ''modification,'' we believe that we have discretion in defining the term as we think it best for the minor NSR program in Indian country that we are proposing today. We do not believe that the recent decision of the D.C. Circuit Court of Appeals applies to minor NSR programs. We seek comment on whether our proposed definition of modification is appropriate for minor NSR for minor sources.

This rule would apply to certain modifications at minor sources and to minor modifications (not major modifications as defined in proposed 40 CFR 49.167 and in 40 CFR 52.21) at major sources. How such modifications would be addressed under the proposed rule is explained in section IV.A.6 of this preamble. Section IV.A.6 also includes detailed flowcharts to aid you in determining if a proposed modification would be subject to the proposed rule.

3. What are the minor NSR thresholds and how did we develop them?

A review of several State minor NSR programs indicated that a number of State programs have established cutoff levels or minor NSR thresholds, below which sources are exempt from their minor NSR rules. We believe that such an approach is also appropriate in Indian country. Section 110(a) (2)(C) of the Act requires minor NSR programs to assure that the NAAQS are attained and maintained. Applicability thresholds are proper in this context provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS. As discussed further, the minor NSR thresholds that we are proposing today meet this criterion. In addition, these thresholds will result in a more cost-effective program and reduce the burden on sources and reviewing authorities.

In today's rulemaking, we are proposing to adopt minor NSR thresholds as emission rates in tpy. In setting the minor NSR thresholds for minor sources of regulated NSR pollutants, we decided to use emission rates, rather than air quality impacts, as the basis for the exemption. We chose this approach because we were concerned that applicability determinations based on projected air quality impacts would be excessively complex and resource intensive. In addition, it is consistent with the approach used in major NSR.

We are proposing minor NSR thresholds that we have developed based on a review of several State minor NSR programs. We found that there is variation in State approaches to minor NSR applicability. Some States do not prescribe source applicability thresholds, instead providing a list of emission units and activities that are excluded from minor NSR. Many of the States that do have applicability thresholds also provide a list of excluded emission units and activities. In today's rulemaking, we propose threshold levels that we believe are neither the most stringent nor the least stringent of the levels found in existing State minor NSR rules. These threshold levels represent a reasonable balance between environmental protection and

economic growth, since we did not want them to be so high that they were not environmentally protective or so low that they ensured environmental protection at the cost of discouraging economic growth. We consider the proposed thresholds to be representative of such thresholds in State minor NSR programs, and we believe that these limits will be appropriate for use in Indian country. The proposed thresholds are listed in Table 1.

TABLE 1.—MINOR NSR THRESHOLDS

Regulated NSR pollutant	Minor NSR thresholds for non-attainment areas (tpy)		Minor NSR thresholds for attainment areas (tpy)
	Extreme ozone areas	Other areas	
Carbon monoxide (CO)	5	5	10
Oxides of nitrogen (NO_X)	0	5	10
Sulfur dioxide (SO_2)	5	5	10
Volatile Organic Compounds (VOC)	0	2	5
PM	5	5	10
PM–10	1	1	5
PM–2.5	0.6	0.6	3
Lead	0.1	0.1	0.1
Fluorides	NA	NA	1
Sulfuric acid mist	NA	NA	2
Hydrogen sulfide (H_2S)	NA	NA	2
Total reduced sulfur (including H_2S)	NA	NA	2
Reduced sulfur compounds (including H_2S)	NA	NA	2
Municipal waste combustor emissions	NA	NA	2
Municipal solid waste landfills emissions (measured as Non Methane Organic Compounds)	NA	NA	10

The selected minor NSR thresholds distinguish between minor stationary sources of regulated NSR pollutants located in nonattainment versus attainment areas and by pollutant. We believe this distinction is important because of the different air quality goals in nonattainment and attainment areas.

In some cases, a tribe's area of Indian country may be divided between a nonattainment area and an attainment area. In this situation, the applicable threshold for a proposed source or modification would correspond to the designation of the area where the source would be located. If a source straddles the two areas, the more stringent thresholds would apply.

To evaluate how the proposed minor NSR thresholds might affect new sources locating in Indian country, we looked at the size distribution of existing sources across the country. Using the National Emission Inventory (NEI), which includes the most comprehensive inventory of existing U.S. stationary point sources that is available, we determined how many of these sources fall below the proposed minor NSR thresholds, how many are between the minor NSR and major NSR thresholds, and how many are above the major NSR threshold.[5] If we assume that the distribution of new sources will mirror the existing source distribution, this analysis approximates the fraction of new sources that will be exempt from minor NSR, subject to minor NSR, and subject to major NSR, respectively. The results of this analysis by pollutant are summarized in Table 2.

TABLE 2.—DISTRIBUTION OF SOURCES AND EMISSIONS UNDER PROPOSED MINOR NSR THRESHOLDS

Pollutant	Total facilities		Unregulated minor sources		Minor sources		Major sources	
	No. ($\times 10^3$)	TPY ($\times 10^6$)	% of total	% of TPY	% of total	% of TPY	% of total	% of TPY
CO	28.9	4.43	65	0.8	29	11	6	88
SO_2	21.2	13.90	76	0.1	16	1	8	99
PM_{10}	33.9	1.69	65	1.3	32	22	4	76
$PM_{2.5}$	33.8	1.33	59	0.8	38	23	3	76
Ozone—VOC	43.3	1.60	42	1.1	53	41	5	58
Ozone—NO_X	30.5	7.93	53	0.4	36	6	11	93
Nitrogen dioxide (NO_2)	30.5	7.93	59	0.6	32	7	9	92

As shown in Table 2, we performed the analysis for each of the criteria pollutants except lead, including VOC and NO_X emissions as the precursors of ozone.[6] For each pollutant, the table gives the total number of facilities in the emission inventory for that pollutant and the total, nationwide annual emissions of the pollutant. The column

[5] For this analysis, we used the final 1999 NEI, extrapolated to 2001. More on the 1999 NEI can be found at *http://www.epa.gov/ttn/chief/net/1999inventory.html.*

[6] For the analysis, we used the major NSR and proposed minor NSR thresholds for each pollutant based on the attainment status and classification of the county in which each source is located. We made certain simplifying assumptions, including using the 250 tpy major source threshold for all sources in attainment areas, regardless of source category or major source status for other pollutants. For the details of the analysis,*see* ''Analysis of the Proposed Minor NSR Thresholds'' dated October 24, 2005 in the docket for this rulemaking.

labeled ''unregulated minor sources'' represents the percentage of total sources that fall below the minor NSR threshold, along with the percentage of total annual emissions that those sources emit. The ''minor sources'' column gives the same information for sources that fall between the minor NSR threshold and the major NSR threshold, while the ''major sources'' column addresses sources that exceed the major NSR threshold.

We believe that Table 2 provides excellent evidence that sources with emissions below the proposed minor NSR thresholds will be inconsequential to attainment and maintenance of the NAAQS. For each pollutant, only around 1 percent (or less) of total emissions would be exempt from review under the minor NSR program. At the same time, the proposed thresholds will promote a cost-effective program. According to Table 2, anywhere from 42 percent to 76 percent of sources (depending on the pollutant) would be too small to be subject to preconstruction review.

We believe that the proposed minor NSR thresholds provide a reasonable approach to determining the applicability of the minor NSR program. These thresholds would prevent stationary sources that make negligible contributions to pollution from being regulated under this rule. However, this would not affect the applicability of other requirements, such as those found in an NSPS or a MACT standard. At the same time, the limits would ensure that intermediate-sized sources would be subject to reasonable control technology requirements. We seek comment on our approach to selecting the proposed minor NSR thresholds, on alternative approaches to selecting such thresholds, and on alternative applicability provisions (such as source category exemptions).

4. Are any emissions units and activities at stationary sources exempt from this rule?

Certain emissions units and activities at stationary sources either do not emit regulated NSR pollutants to the ambient air or emit these pollutants in negligible amounts. We propose that such activities located at a minor source be exempt from the requirements of this rule (*See* proposed 40 CFR 49.153(c)). We propose that such activities are limited to the following:

- Air-conditioning units for comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or industrial process;
- Ventilating units for comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
- Heating units for comfort that do not provide heat for any manufacturing or other industrial process;
- Noncommercial food preparation;
- Consumer use of office equipment and products;
- Janitorial services and consumer use of janitorial products;
- Internal combustion engines used for landscaping purposes;
- Bench scale laboratory activities, except for laboratory fume hoods and vents; and
- Any emissions unit or activity that does not have the potential to emit a regulated NSR pollutant or HAP, so long as that emissions unit or activity is not part of a process unit that emits or has the potential to emit a regulated NSR pollutant or HAP.

5. What are the permit application, control technology, and air quality analysis requirements, and what is the permit issuance process?

Permit Application Requirements. Under today's proposed minor NSR program, as the owner or operator of a proposed new minor source or a proposed modification that is subject to this rule, you must submit a complete application to your reviewing authority requesting a minor NSR permit specific to your source (unless you wish to seek a ''general permit,'' if eligible). In addition to basic information identifying and describing your source, your application must include a list of all affected emissions units. ''Affected emissions units'' are defined as all the emissions units at your proposed new minor source or all the new, modified, and replacement emissions units that comprise your proposed modification (excluding the exempt emissions units and activities listed in proposed 40 CFR 49.153(c)). *See* proposed 40 CFR 49.152(d).

Your application also must document the increase in emissions of regulated NSR pollutants that will result from your new source or modification so that the reviewing authority can verify that you are subject to this proposed minor NSR program, rather than to major NSR. For each new emissions unit that you list, you must provide the PTE in tpy for each regulated NSR pollutant, along with supporting documentation. For any modified or replacement unit that you list, you must provide the allowable emissions of each regulated NSR pollutant in tpy both before and after the modification or replacement, along with supporting documentation. For emissions units that do not have an established allowable emissions level prior to the modification, you must report the PTE. The allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the unit's PTE. In calculating these emission levels for applicability purposes, we seek comment on whether you should include fugitive emissions, to the extent that they are quantifiable, for all sources, or include them only for source categories listed pursuant to section 302(j) of the Act or exclude them for all sources.

You may include in your application proposed emission limitations for the listed emissions units. If you do, you must account for these limitations in your calculations of post-construction PTE and/or allowable emissions. The application also must identify and describe any existing air pollution control equipment and compliance monitoring devices or activities relevant to the affected emissions units, as well as any existing emission limitations or work practice requirements to which any affected emissions units are subject. *See* proposed 40 CFR 49.154(a) for the complete requirements for your application for a minor NSR permit.

You may request that the reviewing authority establish an annual minor source plantwide applicability limitation (minor source PAL) for one or more of the regulated NSR pollutants emitted by your new or existing minor stationary source. A minor source PAL is a source-wide limitation on allowable emissions of a regulated NSR pollutant, expressed in tpy, that is established under the proposed 40 CFR 49.155 and that is enforceable as a practical matter (*See* proposed 40 CFR 49.152(d)).

For a new minor stationary source, you may request minor source PALs for some or all of the regulated NSR pollutants emitted by your source. For the other regulated NSR pollutants that your source emits (*i.e.,* the non-PAL pollutants), your permit will contain annual allowable emissions limits for each emissions unit.

You may request a minor source PAL for one or more regulated PAL pollutants at the time that you are modifying an existing minor stationary source. Each PAL will apply across all the emissions units at your source, whether or not they are affected by the modification. For the non-PAL pollutants, only the emissions units that are affected by the modification will receive annual allowable emissions limits. If you request one or more minor source PALs for an existing minor stationary source at a time when no

modification is planned, each PAL will apply across all the emissions units at your source, but your permit will include no new emission limits for the non-PAL pollutants.

If your source is in a source category covered by a ''general permit'' issued under proposed 40 CFR 49.156, you may apply for the general permit for that source category. A general permit is a permit developed by your reviewing authority for a general category of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, and recordkeeping. The permit application requirements for a particular general permit will be specified in that general permit. General permits are discussed further in section IV.A.13 of this preamble.

Control Technology Review. As required under section 110(a)(2)(C) of the Act, the minor NSR permitting program that we are proposing today is primarily designed to assure that the NAAQS are achieved, and to prohibit any stationary source from emitting any air pollutant in amounts that would contribute to nonattainment or interfere with maintenance of the NAAQS. At the same time, we wish to provide flexibility in control technology requirements for minor sources located in Indian country to promote economic growth and development.

Therefore, in today's proposal, we are proposing that your reviewing authority perform a control technology review on a case-by-case basis when issuing the permit (other than a general permit). By ''control technology,'' we mean pollution prevention techniques, add-on pollution control equipment, design and equipment specifications, work practices, and operational restrictions. This review would consider local air quality needs, typical control technology used by similar sources in surrounding areas, anticipated economic growth in the area, and cost-effective control alternatives. At a minimum, the reviewing authority must require control technology that assures that the NAAQS are achieved and that each affected emissions unit will comply with all requirements of 40 CFR parts 60, 61, and 63 that apply. The required control technology resulting from such a review may range from technology that is less stringent than the reasonably available control technology (RACT) level of control (which is typically required for existing major sources in nonattainment areas), to technology that is the BACT level of control (which is the level required for new major sources and major modifications in attainment areas), depending on the air quality needs of the area, other applicable regulatory programs of the Act, and technical and economic feasibility.

Based on the results of the control technology review, the emission limitations required by the reviewing authority may consist of emission limits, pollution prevention techniques, design standards, equipment standards, work practice standards, operational standards, or any combination thereof. If it is technically and economically feasible, the reviewing authority must require an emission limit (*i.e.,* a limit on the quantity, rate, or concentration of emissions) for each affected emissions unit at your source.

For a new minor source that is subject to this rule, the case-by-case control technology review would be conducted for all emissions units [except the exempt emissions units and activities discussed in section IV.A.4 and listed in proposed 40 CFR 49.153(c)] that emit or have the potential to emit the pollutant for which the source is subject to this rule. However, for modifications, such control technology review would apply only to the affected emissions unit(s).

In establishing a case-by-case control technology review process to determine an appropriate level of control for minor sources and subject modifications in Indian country, we considered a number of factors. On the one hand, we believe that the control technology review process should be as flexible as possible to provide for the specific needs and conditions of each area of Indian country, consistent with the requirements of the Act. On the other hand, we believe that a reasonable level of air pollution control for new minor sources and subject modifications in Indian country is generally warranted to ensure protection of air resources in Indian country. In addition, we wish to ensure that Indian country not be seen as a potential ''pollution haven'' where minor stationary sources can go to escape air pollution control requirements. At the same time, we do not want to put tribes or owners and operators locating in Indian country at a competitive disadvantage by requiring substantially more stringent controls in Indian country than are required in the surrounding areas.

We are seeking comment on the proposed case-by-case control technology review for all new and modified sources subject to this minor NSR program. We also request comment on whether the program should have a control technology requirement at all. Section 110(a)(2)(C) of the Act requires a minor NSR program that assures that the NAAQS are achieved, but does not mandate that the program include a control technology requirement. We are seeking comment on whether a control technology requirement is necessary to achieve the purposes of the Act, or whether other approaches can achieve these purposes just as well with less cost or administrative burden.

Air Quality Impacts Analysis. Typically, for a new or modified minor source permit application, your reviewing authority would not require an Air Quality Impacts Analysis (AQIA). In rare instances, if your reviewing authority has reason to be concerned that the construction of your minor source or modification could cause or contribute to a NAAQS or PSD increment violation, to ensure protection of the NAAQS, we are proposing that your reviewing authority may require you to conduct an AQIA using dispersion modeling in accordance with 40 CFR part 51, appendix W to determine the impacts that will result from your new source or modification. If the AQIA demonstrated that the construction of your source or modification would cause or contribute to a NAAQS or PSD increment violation, you would be required to further reduce its impact before you could obtain a permit.

Permit Issuance Process. Within 45 days after receiving your permit application, your reviewing authority must either determine that the permit application is complete enough to commence a technical review or request additional information. If you do not receive a request for additional information or a notice of complete application within 50 days of your permitting authority's receipt of your application, your application would be deemed complete. (You should contact your reviewing authority to find out the date that it received your application so that you will know when this 50-day period is up.) Once the application is complete, your reviewing authority develops a draft permit and provides a public notice seeking comments on the draft permit for a 30-day period. After considering all timely, relevant comments, if your reviewing authority determines that your application meets all applicable requirements, it would issue you a final permit. Otherwise, the reviewing authority would send you a letter denying your permit application with reasons for the denial. We seek comment on the proposed permit issuance process.

We are proposing that your reviewing authority would issue you a permit with an allowable emissions limit in tpy for each affected emissions unit (Option A). You have the alternative of requesting a minor source PAL or cap in tpy (Option B), and your reviewing authority may issue such a permit. This type of permit can provide the flexibility to make frequent changes at your source without permit review. If you wish, you may request a minor source PAL for some pollutants and allowable emissions limits for each emissions unit for other pollutants.

Permit Term. A preconstruction permit does not expire. Your permit remains valid as long as you commence construction of your new source or modification within 18 months after the effective date of the permit, you do not discontinue construction for a period of 18 months or more, and you complete construction in a reasonable time. Your reviewing authority may extend the 18-month period where justified. The 18-month limit does not apply to the time period between construction of approved phases of a phased construction program; you must commence construction of each such phase within 18 months of the approved commencement date for that phase.

6. When are modifications subject to this rule?

As discussed in section IV.A.2 of this preamble, for the purposes of the minor NSR program proposed today, a modification means any physical or operational change at a stationary source that would cause an increase in the allowable emissions of the affected emissions units for any regulated NSR pollutant or that would cause the emission of any regulated NSR pollutant not previously emitted (with the exclusions outlined in section IV.A.2 of this preamble). The proposed rule would apply to certain modifications at your minor sources and minor modifications at your major sources. For such modifications, you would have to meet the application requirements and comply with any control technology requirements as discussed in section IV.A.5 of this preamble. In rare instances, if your reviewing authority has reason to believe that your modification could result in a violation of the NAAQS or PSD increment, you would be required to conduct an AQIA.

In all NSR applicability determinations, you must evaluate each regulated NSR pollutant individually. The area where your source is located may be attainment for some pollutants and nonattainment for others, which affects which pollutants are regulated as well as the major and minor NSR applicability thresholds. For a given modification, a particular pollutant may be subject to review under PSD, nonattainment major NSR, or minor NSR, or may not be subject to any of these programs.

The first step in determining whether your proposed physical or operational change is subject to the minor NSR program proposed today is to determine whether the change is subject to the applicable major NSR program (*i.e.*, proposed 40 CFR 49.167 or 40 CFR 52.21 for nonattainment and attainment areas, respectively). If you are changing an existing major source, you would determine whether the change qualifies as a major modification using the procedures in the applicable major NSR program. If you are changing an existing minor source, you would determine whether the change would qualify as a major stationary source by itself under the applicable major NSR program. If your proposed physical or operational change is subject to review under major NSR for a regulated NSR pollutant, it is not subject to the minor NSR program for that pollutant.

If your proposed physical or operational change is not subject to major NSR, the next step is to determine whether the change qualifies as a modification under the minor NSR program. To be a modification, the change must result in an increase in allowable emissions at your source. Thus, the next step is to calculate whether, and by how much, allowable emissions would increase as a result of the change. If your minor stationary source is subject to a minor source PAL for a regulated NSR pollutant (Option B in section IV.A.5 of this preamble), the emissions increase for that pollutant would be the PAL level after the physical or operational change minus the PAL level prior to the change. For physical or operational changes at other minor stationary sources (*i.e.*, those with annual allowable emissions limits for each emissions unit (Option A), those that are unpermitted, and those with a combination of unpermitted emissions units and emissions units with annual allowable emissions limits) and at major stationary sources, the total increase in allowable emissions resulting from your proposed change would be the sum of the following:

- For each new emissions unit that is to be added, the emissions increase would be the PTE of the unit.
- For each emissions unit with an allowable emissions limit that is to be changed or replaced, the emissions increase would be the allowable emissions of the emissions unit after the change or replacement minus the allowable emissions prior to the change or replacement. This may be a negative value for an emissions unit if its allowable emissions would be reduced as a result of the change or replacement.
- For each unpermitted emissions unit that is to be changed or replaced, the emissions increase would be the allowable emissions of the unit after the change or replacement minus the PTE prior to the change or replacement. It is necessary to use PTE since these emissions units will not have a allowable emissions limit prior to the change. This may be a negative value for an emissions unit if its post-change allowable emissions would be less than its pre-change PTE.

This process of summing the emissions increases and decreases across all the affected emissions units is called ''project netting,'' which is discussed later in this section of the preamble.

If your proposed physical or operational change qualifies as a modification (*i.e.*, causes an increase in allowable emissions), the final step in determining whether the proposed modification is subject to today's proposed minor NSR program is to compare the increase in allowable emissions to the applicability criteria for the type of source and emission limits that you have. Your modification would be subject to the minor NSR program in the following circumstances:

- If your minor source has a permit with a minor source PAL in tpy (Option B in section IV.A.5 of this preamble) and the modification would result in any increase in the PAL level. To determine if an increase in the PAL level is necessary, you must evaluate whether your source's actual emissions after the modification would exceed the PAL level by any amount. If you could construct and operate the modification without your actual emissions exceeding your minor source PAL, then no permit action would be required.
- For other minor sources, if the modification would increase total allowable emissions from the affected emissions units by an amount that equals or exceeds any of the minor NSR thresholds listed in Table 1 of this preamble.
- If the minor modification at your major source would increase total allowable emissions from the affected emissions units by an amount that equals or exceeds any of the minor NSR thresholds listed in Table 1 of this preamble.
- In addition, if the modification would increase allowable emissions from any emissions unit above an

established unit-specific allowable emission permit limit, even if the total increase for your source would be less than the corresponding minor NSR threshold listed in Table 1 of this preamble. In this case, the needed increase in the unit-specific allowable emissions permit limit can be accomplished through an administrative permit revision (*See* proposed 40 CFR 49.159(f)).

In addition, a physical or operational change may be subject to today's proposed minor NSR program even if it is not classified as a modification (*i.e.*, it does not increase allowable emissions of a regulated NSR pollutant or result in emission of a pollutant not previously emitted). For example, a proposed change might increase allowable emissions from some emissions units and decrease emissions at others so that, overall, emissions from the affected units would stay the same or decrease. If the post-change emissions at any emissions unit would exceed a permitted allowable emissions limit for that unit, you must apply to revise the existing permit limit before you may implement the change. The needed increase in the unit-specific allowable emissions permit limit can be accomplished through an administrative permit revision (*See* proposed 40 CFR 49.159(f)).

Similarly, other proposed physical or operational changes that could not be implemented within the requirements of an existing permit would necessitate a permit revision, even if they are not otherwise subject to major or minor NSR. We believe that this fact will serve to ensure that the types of changes that could significantly alter the dispersion characteristics of the air pollutants emitted by your source will be brought to the attention of your reviewing authority. Thus, the reviewing authority will be in the position to evaluate whether the change has the potential to increase ambient concentrations outside the boundaries of your source. If so, the reviewing authority can require measures to mitigate any unacceptable air quality impacts (*i.e.*, to protect the NAAQS and PSD increments) as part of the permit revision process.

Flowcharts to aid in determining major and minor NSR applicability are presented in Figures 1 through 6. These flowcharts illustrate the applicability process for new sources and modifications in attainment areas and nonattainment areas. The flowcharts should be used to evaluate each regulated NSR pollutant individually since different flow charts may apply to different pollutants depending on the attainment status of the area for each pollutant.

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Figure 1. New Source Review Flowchart

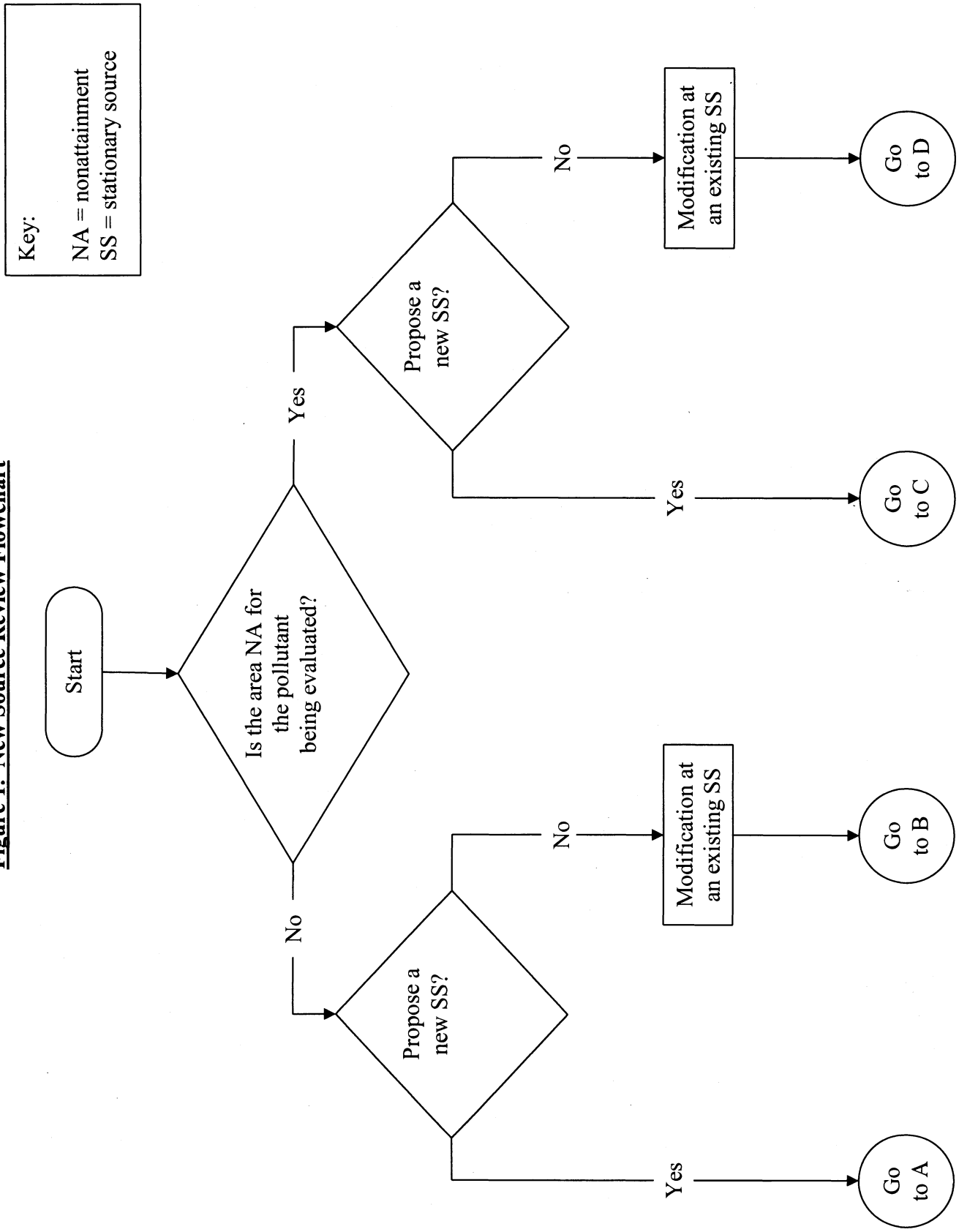


Figure 2. New SS in an Attainment or Unclassifiable Area

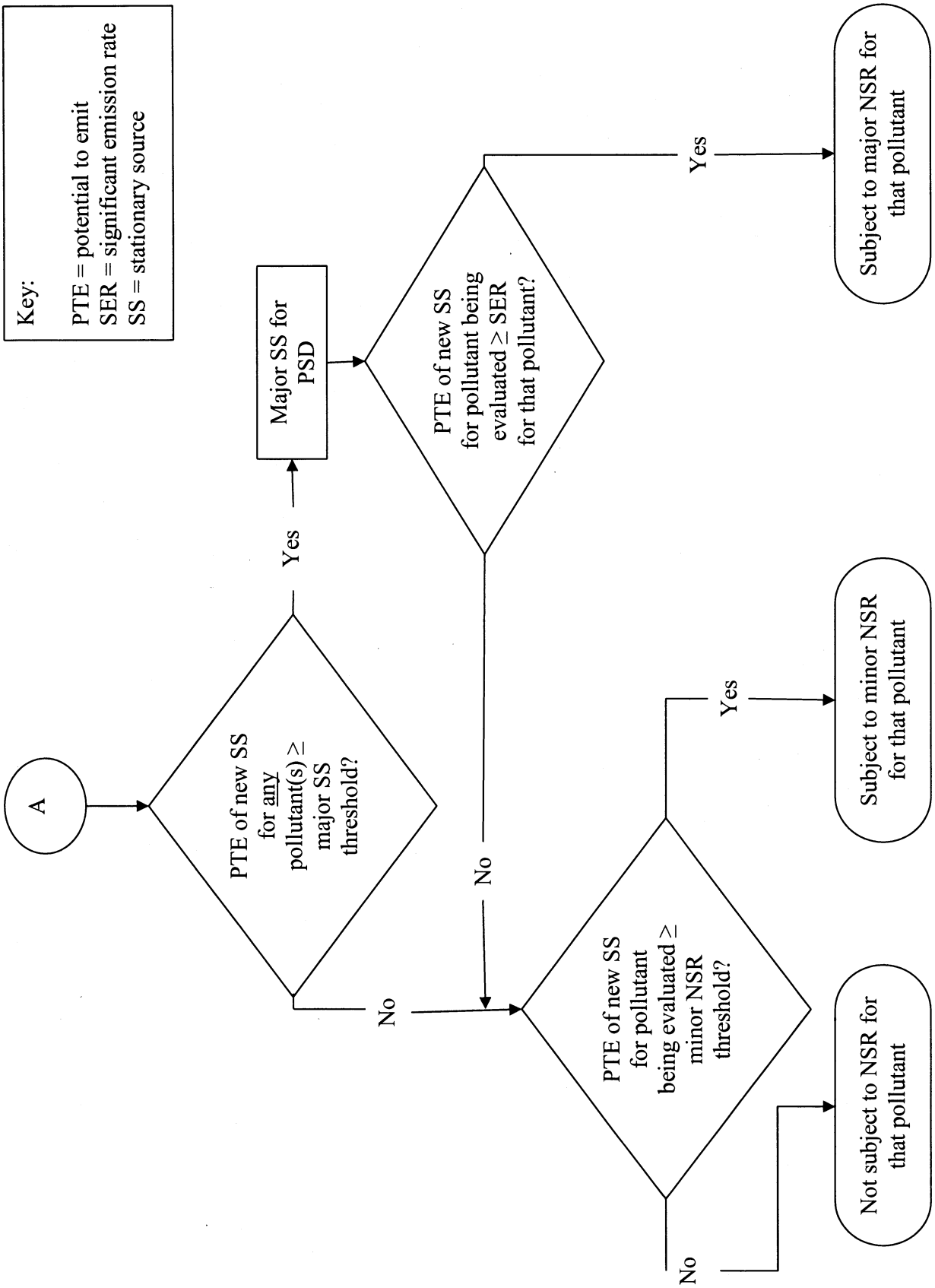


Figure 3. Modification at an Existing SS in an Attainment or Unclassifiable Area – Major NSR Applicability

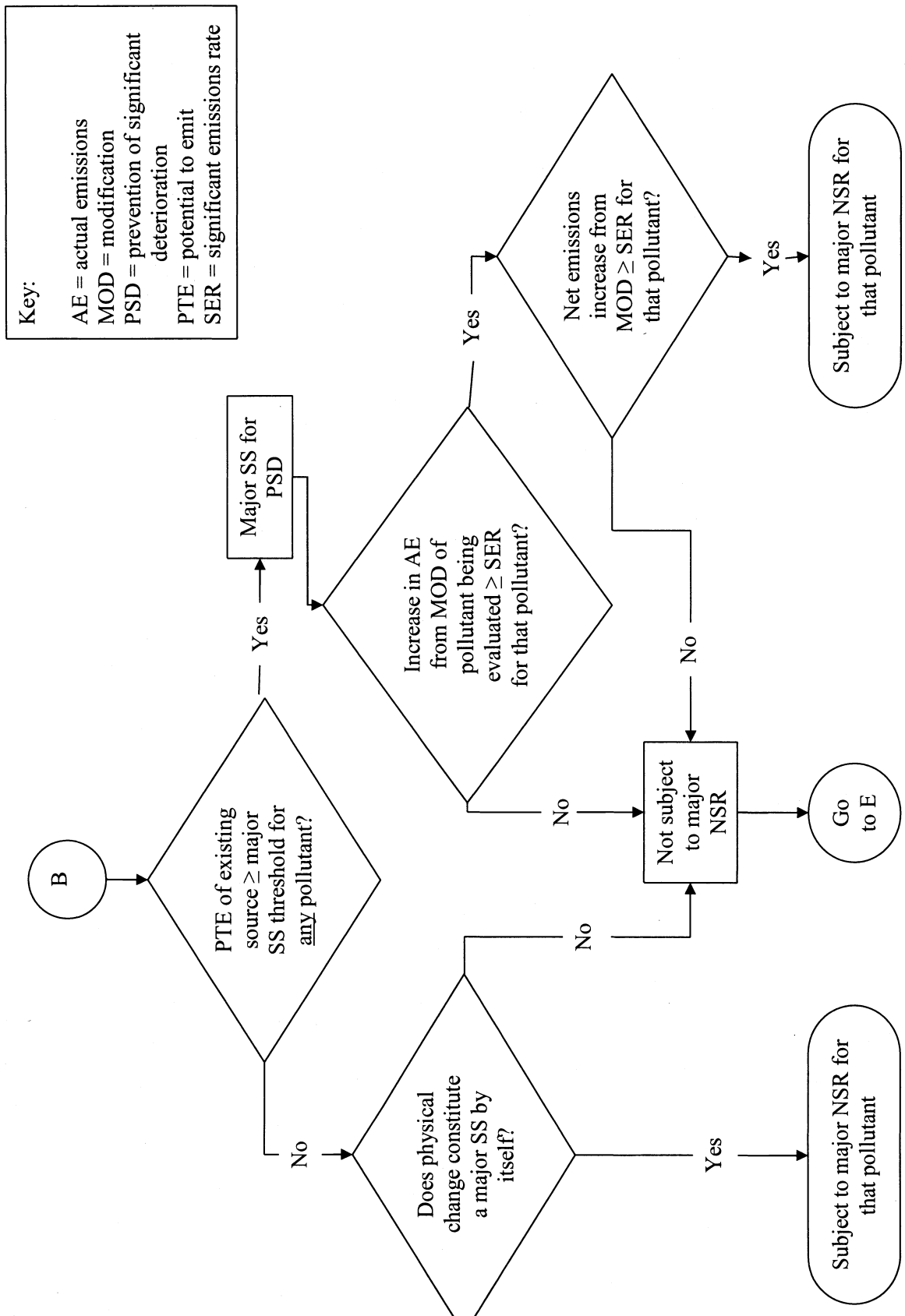


Figure 4. New SS in a Nonattainment Area

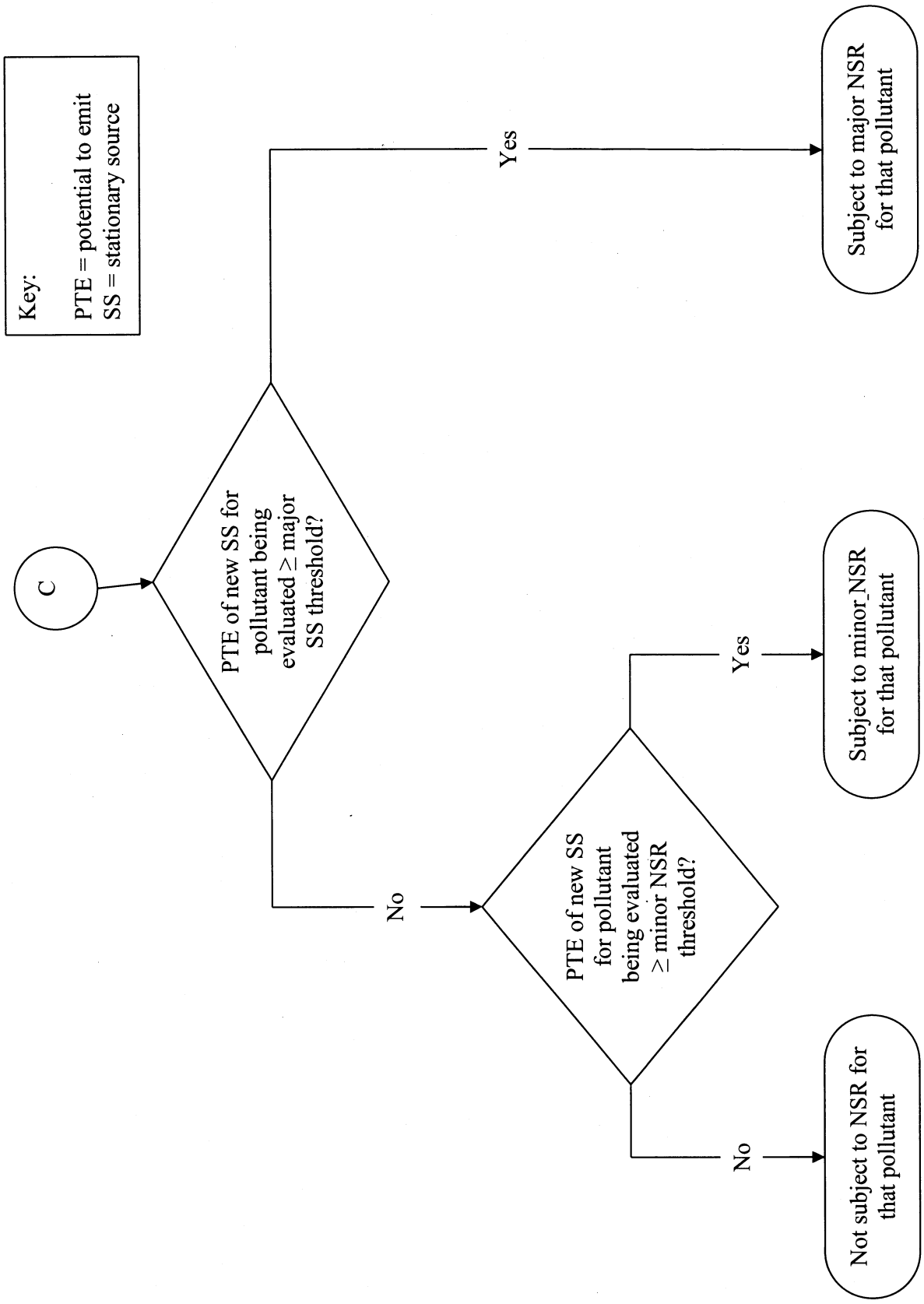


Figure 5. Modification at an Existing SS in a Nonattainment Area – Major NSR Applicability

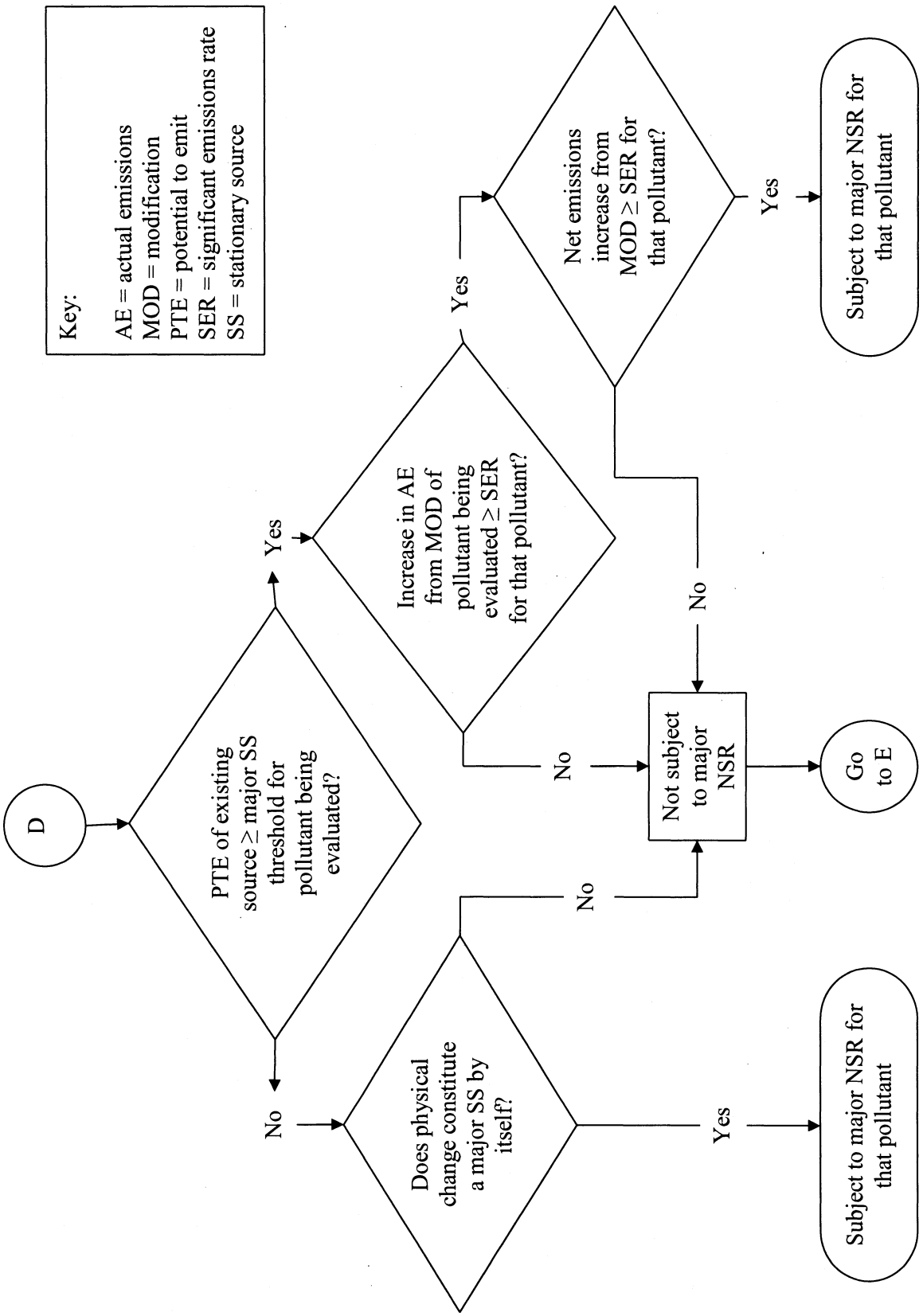
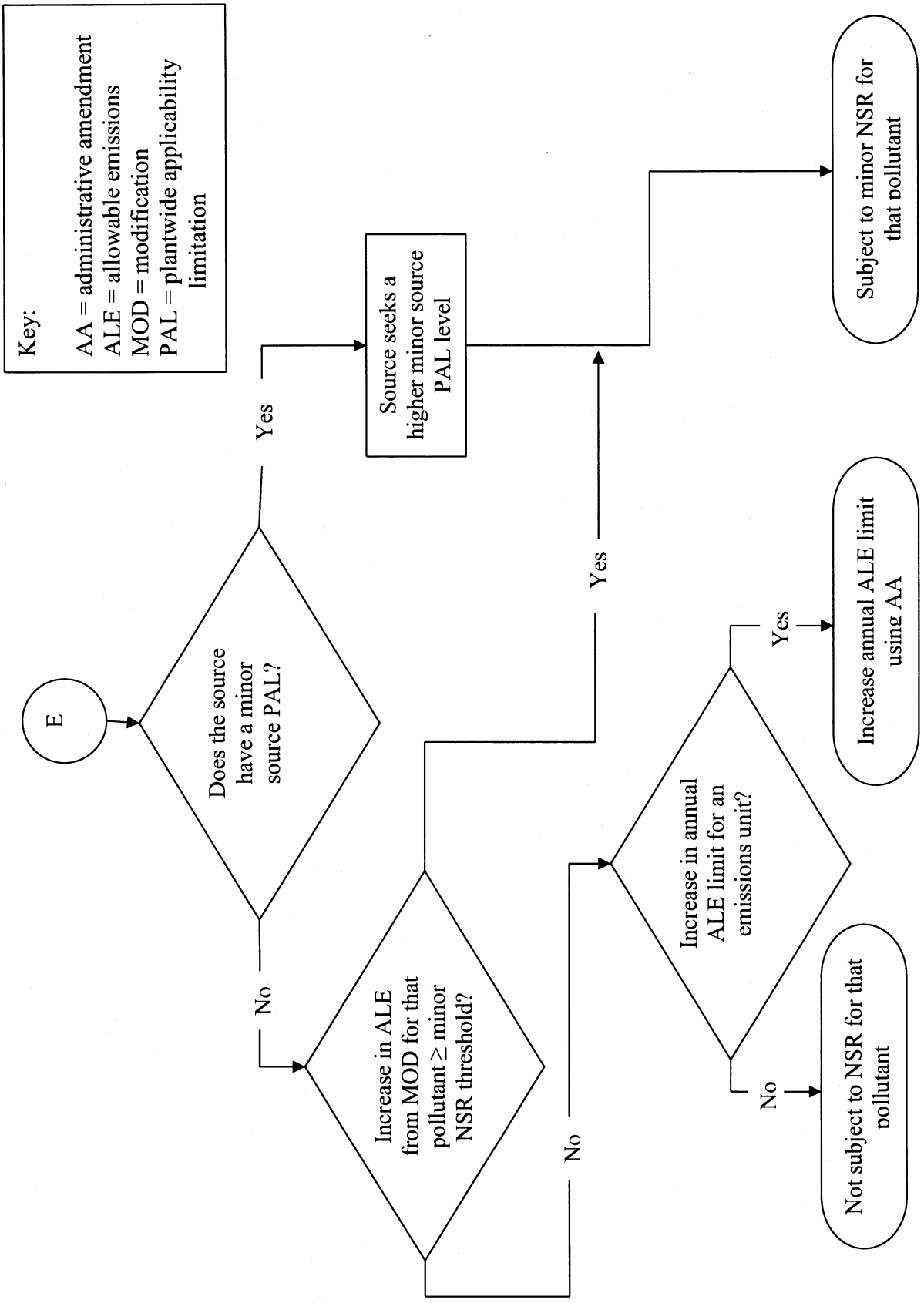


Figure 6. Modification at an Existing SS – Minor NSR Applicability



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7. Why do we believe that an allowable-to-allowable test is appropriate for minor sources?

As discussed earlier, we are proposing an ''allowable-to-allowable'' applicability test as the primary test for modifications under this minor NSR program. We evaluated the three basic types of applicability tests (actual-to-potential, actual-to-projected-actual, and allowable-to-allowable) and determined that the allowable-to-allowable test is most suitable for minor NSR in Indian country.

We rejected the actual-to-potential test for many of the same reasons that we have moved away from this test in the major NSR program. In this type of system, the emissions increase that results from a change is determined by comparing the emissions unit's PTE after the change to its actual emissions prior to the change. If pre-change actual emissions are well below the unit's PTE, as is generally the case, any change will result in a large emissions increase when calculated in this manner. To avoid triggering NSR, a source must accept a limit on the unit's post-change PTE at a level that exceeds pre-change actual emissions by less than the applicable NSR threshold.

As discussed in our December 2002 NSR Improvement rulemaking, there are numerous objections to the actual-to-potential test (67 FR 80194). Industry has long believed that the need to take a PTE limit to avoid NSR has the effect of unfairly confiscating the emissions unit's unused operating capacity even though, in many cases, the changed unit as a practical matter will function essentially as it did before the change and emissions to the environment will not increase. In addition, the actual-to-potential test discourages sources from making the types of changes that improve operating efficiency, implement pollution prevention projects, and result in other environmentally beneficial effects.

In the December 2002 NSR Improvement rulemaking for major NSR, we promulgated an alternative ''actual-to-projected-actual'' test for major modifications. However, we do not propose to adopt the same course for the minor NSR program in Indian country. We believe that determining emissions changes in terms of changes in allowable emissions typically will be easier and more straightforward for the minor sources subject to this program. In particular, the major NSR procedures for projecting and tracking future actual emissions may be somewhat complicated for minor sources. While we believe that this system is within the capabilities of major sources, we believe that a simpler system is more appropriate for the minor sources in Indian country, many of which are unaccustomed to any type of regulation.

We are proposing an allowable-to-allowable test for modifications in the Indian country minor NSR program. We believe that this relatively simple and straightforward system is most appropriate for the minor sources found in Indian country. In addition, we believe that it is beneficial to use allowable emissions as the currency for attainment planning, in that they represent the worst-case post-change emissions. This approach is consistent with section 173(a)(1)(A) of the Act, which requires new and modified major sources to obtain offsets based on allowable emissions. (While we are not requiring offsets for minor sources in Indian country nonattainment areas, we believe that the language in section 173(a)(1)(A) provides validation for our proposed minor NSR modification test.) Finally, we understand that many State minor NSR programs use an allowable-to-allowable test.

As discussed in section IV.A.2 of this preamble, we believe that we have the discretion to use an allowable-to-allowable test for this minor NSR program because the statutory basis for minor NSR is section 110(a)(2)(C) of the Act, rather than section 111(a)(4). We seek comment on using the proposed allowable-to-allowable test for addressing modifications and on the alternative of using the actual-to-projected-actual test.

As laid out in the second step for determining if a proposed modification is subject to minor NSR, we are proposing to allow ''project netting.'' This means that both increases and decreases in allowable emissions are summed when determining the total emission increase that would result from a proposed modification.

The major NSR program uses a two-step procedure for determining applicability. First, the emission increases from the proposed project are summed. If the total emission increase from the project is ''significant'' (that is, equal to or greater than the major NSR threshold), the second step in the process is ''contemporaneous netting.''

In contemporaneous netting, the emission increase due to the proposed modification is summed with all other emission increases and decreases that have occurred at the major source during the contemporaneous period (generally 5 years). If the net emission increase determined in this way is significant, the proposed modification is a ''major modification'' that is subject to review under major NSR.

We considered including contemporaneous netting in today's minor NSR program, but have elected not to propose it as our preferred approach. Contemporaneous netting has proved to be a complicated aspect of the major NSR program. While major sources are accustomed to contemporaneous netting and have built the capacity to track emissions changes and carry out this procedure, many minor sources that would be covered by today's proposed minor NSR program lack such capacity. We believe that a simpler system is more appropriate for the minor sources in Indian country.

Nevertheless, we believe that minor sources should be able to receive credit for the emission decreases that would result from a proposed modification. Hence, we are proposing to allow project netting in today's minor NSR program.

We believe that project netting calculations are relatively straightforward and are within the capacity of most minor sources. For example, an existing minor source might wish to expand by adding a second production line to go with an existing, uncontrolled line. If the proposed project includes adding an air pollution control device to control emissions from both lines, it would result in an allowable emissions increase attributable to the new line, as well as an allowable emissions decrease from the existing, previously uncontrolled line. Determining the overall net emission change that would result from the proposed modification would be a straightforward exercise. However, to validate the project net emissions increase, as in the major NSR program, the source must take limits on allowable emissions for both lines that are enforceable as a practical matter.

We believe that in proposing to allow project netting, but not contemporaneous netting, we have struck an appropriate balance for the minor NSR program in Indian country. We believe that the resulting program properly allows you to receive credit for emission reductions that are achieved as part of an overall project, without introducing too much complexity into the program. We invite comment on this approach, as well as on other approaches that would allow minor sources in Indian country to take credit for emission reductions.

8. Is your existing minor source subject to this rule?

States develop, adopt, and submit to us for approval a SIP that contains a

broad range of measures to attain and maintain the NAAQS and to meet other requirements of section 110(a) of the Act. The SIPs typically include some emission limitations for existing sources, even those that do not modify their operations. Hence, a SIP provides an infrastructure to achieve the air quality goals of attaining and maintaining the NAAQS.

Tribes are not required to submit implementation plans, and to date, very few tribes have sought our approval of such plan. Consistent with our approach to Federal implementation of the Act's requirements, we issue FIPs for areas of Indian country as necessary or appropriate. However, there is still a regulatory gap in relevant infrastructure in much of Indian country. Because of this unique situation, we are raising the question of whether it may be appropriate to regulate existing minor sources in Indian country under this minor NSR program to attain and maintain NAAQS. We are proposing Option 1 and soliciting comment on Options 2, 3, and 4:

Option 1. Exempt existing minor sources from this rule. This option would not affect any existing sources (unless they propose a modification) and, thus, be the least burdensome for such sources in Indian country. Many State minor NSR rules do not apply to such sources; hence this would be consistent with many of the areas that surround Indian country. Under this option, we are seeking comment on whether such an exempt minor source should be allowed to opt for a permit under this program (without being subject to any of the requirements) merely to establish enforceable limits and conditions associated with a consent decree or other enforcement mechanism.

Option 2. Require existing synthetic minor sources to become subject to the minor NSR program requirements (including control technology review and other requirements as provided in section IV.A.5. of this preamble) and to submit a permit application within 1 year after the effective date of the program. This option would draw into the regulatory scheme the biggest minor sources and may result in large emissions reductions in instances where the required control technology review would result in new or more stringent controls. Option 2 would affect relatively few existing minor sources in Indian country.

Option 3. Require all existing minor sources to register within 1 year after the effective date of this program, but not be subject to the permitting requirements. This option would affect all minor sources in Indian country, but would involve very little burden to sources, since this would be a one-time registration. Option 3 would allow your reviewing authority to collect information on the number and size of existing minor sources, which would assist with NAAQS maintenance and attainment planning in Indian country.

Option 4. Require all existing minor sources to be subject to the minor NSR program requirements (as provided in section IV.A.5. of this preamble). While this option would result in significant emissions reductions, it would also require significant EPA resources and may also be overly burdensome on minor sources in Indian country. Additionally, we believe that subjecting all minor sources to this program is not necessary to achieve the NAAQS, as demonstrated by state minor NSR programs.

We also seek comment on any other approaches for addressing existing minor sources.

9. How are ''synthetic minor sources'' subject to this rule?

Some sources have the potential to emit one or more pollutant in major source amounts, but have actual emissions that are below the major source thresholds. One of our primary objectives for this rulemaking is to create a mechanism by which you can obtain emission limitations for such sources that are enforceable as a practical matter, so that they can become ''synthetic minor sources'' and avoid major source status. We are therefore proposing to create such a mechanism in 40 CFR 49.158 of the proposed rules. The proposed rules allow for designation of synthetic minor sources (for regulated NSR pollutants) and synthetic minor HAP sources. It is important to note that although you may choose to obtain such emission limitations at your own discretion, once you have accepted an enforceable emission limitation, you must comply with that limitation. This is necessary to ensure that you are legally prohibited from operating as a major source. We are taking comment on the proposal to allow your stationary sources to become synthetic minors in Indian country.

Our 1999 policy memo on synthetic minor sources in Indian country currently provides guidance on how sources that would otherwise be major sources under section 302 or part D of title I of the Act can become synthetic minor sources if their actual emissions remain below 50 percent of the relevant major source PTE threshold and they comply with all other requirements of the policy memo.[7] However, as the memo specifies, this PTE transition policy terminates when we adopt and implement a mechanism that you can use to limit your PTE, or we explicitly approve a tribe's program providing such a mechanism. Today's proposed minor NSR program would provide such a mechanism. Therefore, upon the effective date of these rules when promulgated, the PTE transition policy will expire and you will have to obtain a permit under this minor NSR program for any subsequent synthetic minor sources.

Additionally, for your existing synthetic minor sources under the current policy, you will have 1 year from the effective date of the final rules to apply for a permit under the proposed minor NSR program. If you submit a permit application in accordance with the requirements of proposed 40 CFR 49.158(c) by that date, we will continue to consider your source a synthetic minor source until we issue a permit with synthetic minor limits. The permit will contain monitoring, recordkeeping, reporting, and testing requirements as needed to assure compliance with your synthetic minor permit, but will not impose any additional requirements. Should you fail to submit an application within 1 year of the effective date of the final rules, your source will no longer be considered a synthetic minor source or synthetic minor HAP source (as applicable), and will immediately become subject to all requirements for major sources.

10. How would section 112(g) case-by-case MACT determinations be addressed by this rule?

Section 112(g)(2)(B) of the Act provides that you may not construct or reconstruct a major source of HAPs unless you install MACT. If the Administrator has not established a MACT standard for the source category, the Act requires that MACT must be determined on a case-by-case basis.

Where there is no EPA-approved program in an area of Indian country, we are the reviewing authority for case-by-case MACT under section 112(g)(2)(B). The requirement for a case-by-case MACT determination prior to construction or reconstruction of a major source of HAPs is found at 40 CFR 63.42(c). In 40 CFR 63.43(c), we provide a number of review options for these determinations. These options

[7] John S. Seitz and Eric V. Schaeffer. Policy memo. ''Potential to Emit Transition Policy for Part 71 Implementation in Indian Country.'' March 7, 1999.

include using a title V permit, applying for and obtaining a Notice of MACT Approval, and ''any other administrative procedures for preconstruction review and approval established by the reviewing authority for a State or local jurisdiction which provide for public participation * * *.'' Currently, no tribes have an EPA-approved title V permitting program or the ''other administrative procedures'' for this purpose, although one tribe has been delegated authority to assist us with implementation of the Federal part 71 operating permit program (*i.e.*, the Federal program for issuing title V permits). While we can permit a section 112(g) case-by-case MACT determination through a part 71 permit or a Notice of MACT Approval, we believe that if your source is major only for HAPs it would be administratively convenient for us and you to combine the construction permit process for both regulated NSR pollutants and HAPs under this proposed minor NSR program, rather than also go through the part 71 permit or Notice of MACT Approval process to address HAPs. Therefore, we are proposing to allow for review of section 112(g) case-by-case MACT determinations through this minor NSR program and seek comment on this approach. *See* proposed 40 CFR 49.153(a)(5) for the provisions related to section 112(g) case-by-case MACT determinations. Note that you ultimately will have to obtain a part 71 permit for your major source of HAPs.

11. What are the proposed requirements for public participation in the permitting process?

Our requirements for State preconstruction review programs at 40 CFR 51.161 require such programs to provide for public availability of permit applications as well as the reviewing authority's analysis of the application. In addition, State programs must provide opportunity for public comment on permitting actions. To be consistent with these requirements for State programs, we are proposing to require the reviewing authority to make non-confidential information on the permit available to the public and to provide public notice and an opportunity to comment on the draft minor NSR permit. *See* proposed 40 CFR 49.157.

Specifically, we would require that the reviewing authority prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the tribal environmental office or a local library. The public notice must provide an opportunity for public comment and a public hearing on the draft permit. The appropriate types of notice may vary depending on the proposed project and the area of Indian country that would be affected.

In all cases, the proposed rule requires the reviewing authority to mail a copy of the notice to you, the appropriate Indian governing body, and the tribal, State, and local air pollution authorities having jurisdiction in areas outside of the area of Indian country potentially impacted by your source. The proposed rule lists optional approaches that the reviewing authority may elect to use to provide public notice as appropriate for a given situation, depending on such factors as the nature and size of your source, local air quality considerations, and the characteristics of the population in the affected area. The optional methods of notifying the public include the following:

- Mailing or e-mailing a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.
- Posting the notice on its Web site.
- Publishing the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a tribal newspaper or newsletter. We do not believe that such a notice is appropriate for every single minor source permit application since this would require a heavy resource commitment for the reviewing authority, while not necessarily being as effective as some other measures.
- Providing copies of the public notice for posting at locations in the area affected by your source. We expect that such locations might include Post Offices, libraries, tribal environmental offices, community centers, and other gathering places in the community.
- Other appropriate means of notification.

We believe that this combination of mandatory and optional approaches to providing notice is appropriate for today's proposed minor NSR program in Indian country. In addition, we believe that the proposal is consistent with 40 CFR 51.161, which requires a ''notice by prominent advertisement in the area affected,'' but does not specify a newspaper advertisement. We believe that in many areas of Indian country, notices posted in locations frequented by the local population and on agency Web sites, as well as mailed or e-mailed to concerned parties, will provide more ''prominent advertisement'' than would publication in a newspaper.

The reviewing authority must provide for a 30-day public comment period on the draft permit. After considering all relevant public comments, the reviewing authority will make a final decision to issue or deny your permit. The public (including you, the permit applicant) will have an opportunity to appeal the final decision under 40 CFR 49.159 of the proposed rule.

These proposed public participation requirements would apply to preconstruction permits, minor source PAL permits, synthetic minor permits, and the initial issuance of general permits. We seek comment on the proposed public participation requirements in 40 CFR 49.157.

We are also proposing very similar public participation requirements for the nonattainment major NSR program. *See* section IV.B.3 of this preamble.

12. What are the monitoring, recordkeeping, and reporting requirements?

Sections 110(a)(2)(A) and (C) of the Act require that a preconstruction permitting program provide for the enforcement of measures that include ''enforceable emission limitations'' and other control measures, means, or techniques * * * as well as schedules and timetables for compliance.'' Section 110(a)(2)(F) additionally requires that a permitting program may require ''the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners and operators of stationary sources to monitor emissions from such sources,'' as well as ''periodic reports on the nature and amounts of emissions and emission-related data from such sources.''

Generally, we are proposing that all permits issued under this minor NSR program contain emission limitations that are enforceable as a practical matter, as well as adequate monitoring, recordkeeping, and reporting requirements as may be necessary to assure compliance with those limitations. The requirements for monitoring, recordkeeping, and reporting are discussed below; *See* 40 CFR 49.155(a) of the proposed rule for the complete requirements.

Monitoring requirements. The permit must include monitoring requirements sufficient to assure compliance with any control technology requirements contained in the permit. Monitoring

approaches may include continuous emissions monitoring systems (CEMS), predictive emissions monitoring systems (PEMS), continuous parameter monitoring systems (CPMS), periodic manual logging of monitor readings, equipment inspections, mass balances, periodic performance tests, and/or emission factors, as appropriate for your minor source based on the types of emissions units, magnitude of emissions, and air quality considerations. Such monitoring shall assure use of terms, test methods, units, and averaging periods consistent with the control technology and emission limitations required for your source. If the permit includes a minor source PAL for a pollutant at your minor stationary source, it must also include monitoring to determine the actual emissions from your source for each month and the total actual emissions for each 12-month period, rolled monthly, for that pollutant.

Recordkeeping requirements. The permit must include recordkeeping requirements sufficient to assure compliance with the enforceable emission limitations in your permit. Records of required monitoring information must include all calculations using emissions factors, all stack tests or sampling information including date and time of test or sampling, the name of the company or entity that performed the analyses, the analytical techniques or methods used, the results of such analyses and the operating conditions existing at the time of sampling or measurement. All such records including support information must be retained for 5 years from the date of the record. Support information may include all calibration and maintenance records and all original strip-chart recordings or electronic records for continuous monitoring instrumentation.

Reporting requirements. You must provide annual monitoring reports showing whether you have complied with your permit emission limitations. You also must provide prompt reports of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Within a permit, the reviewing authority must define ''prompt'' in relation to the degree and type of deviation likely to occur.

13. What are the criteria for general permits, what source categories generally qualify for them, and what are the permit application requirements for a general permit?

A ''general permit'' is a preconstruction permit that may be applied to a number of similar emissions units or stationary sources. The purpose of a general permit is to simplify the permit application and issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for case-by-case permit development for such facilities. A general permit may be written to address a single emissions unit, a group of the same type of emissions units, or an entire minor source.

The minor NSR program proposed in this action would allow your reviewing authority to issue general permits for categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements. ''Similar in nature'' refers to size, processes, and operating conditions. To issue a general permit, the reviewing authority must provide the same opportunities for public participation and administrative and judicial review that apply to minor NSR permits issued to a specific source under this program. This is true with respect to all aspects of the general permit except its applicability to an individual source. *See* proposed 40 CFR 49.156(b).

Once a general permit has been issued for a source category or category of emissions units, you may submit an application to be covered under the general permit if your proposed new minor source or modification qualifies for coverage under that general permit. Your reviewing authority may grant or deny your request to construct under a general permit without further public participation. However, when you receive approval to be covered under a general permit, you must post a prominent notice at your source of this approval to construct under the general permit. Someone may seek judicial review only on the issue of whether your source qualifies for the general permit. *See* proposed 40 CFR 49.156(e). We believe that general permits offer a cost-effective means of issuing permits and provide a quicker and simpler alternative mechanism for permitting your minor sources than the site-specific permitting process discussed previously.

In setting criteria for sources to be covered by general permits, your reviewing authority would consider the following factors. First, categories of sources or emissions units covered by a general permit should be generally homogeneous in terms of operations, processes, and emissions. All sources or emissions units in the category should have essentially similar operations or processes and emit pollutants with similar characteristics. Second, the sources or emissions units should be expected to warrant the same or substantially similar permit requirements governing operation, emissions, monitoring, recordkeeping, or reporting.

Your sources covered under a general permit would be issued a letter approving coverage under the general permit. You must maintain the general permit and the letter at your source location at all times to be made available for inspection by the reviewing authority.

General permits may be issued to cover any category of numerous similar sources, provided that such sources meet the appropriate criteria. For example, permits can be issued to cover small businesses such as gas stations or dry cleaners. General permits may also, in some circumstances, be issued to cover discrete emissions units, such as individual solvent cleaning machines at industrial complexes. We request comment on the use of general permits, eligible emissions units and source categories, and the process of issuing general permits.

14. What is the administrative and judicial review process proposed for this program?

We are proposing and seeking comment on two options for reviewing initial permit decisions by reviewing authorities under this program. We will discuss these options further, but first we will present the proposed administrative procedures that we expect to be the same regardless of which review option we ultimately select.

The final permit issuance procedures and related notice requirements are proposed in 40 CFR 49.159(a). After decision on a permit, the reviewing authority must notify you of the decision, in writing, and if the permit is denied, of the reasons for the denial. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at all of the locations where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final

permit decision to ensure that the affected community, general public, and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. Depending on the circumstances of your permit, the reviewing authority may elect to provide notice directly to the individuals who commented on the draft permit and/or use any of the other methods of public notice discussed in section IV.A.11 of this preamble (related to public notice of the draft permit).

We are proposing a requirement that the reviewing authority's final decision on your permit be based on an administrative record and requirements on what must be in that record. *See* proposed 40 CFR 49.159(b) and (c). The proposed rules also include provisions at 40 CFR 49.159(e) that address reopening a permit after it has been issued if it contains a material mistake or fails to assure compliance with the permit requirements. In addition, proposed 40 CFR 49.159(f) contains provisions for administrative permit revisions to make minor changes in the permit without being subject to the permit application, issuance, public participation, or administrative and judicial review requirements of the program.

We are proposing two options for reviewing initial permit decisions by reviewing authorities. In Option 1, review of minor NSR permits would be similar to review of major PSD permits issued under 40 CFR 52.21. To challenge the terms of your permit, you or another party would have to file a petition for review with our Environmental Appeals Board (EAB). Decisions by the EAB could be appealed to the Federal Court of Appeals for the tribal area. Alternatively, in Option 2, the reviewing authority's initial permit could be appealed directly to the appropriate Federal Court of Appeals without a requirement to appeal to the EAB first. There are advantages and disadvantages to both approaches. We solicit comment on which option we should adopt.

Option 1. Under Option 1, the proposed administrative and judicial review process for the minor NSR program parallels the process for PSD permits issued under 40 CFR 52.21, which is found in 40 CFR part 124. Since not all of the provisions of part 124 need to apply to this program, rather than adding the minor NSR program to the list of programs to which part 124 applies, in this option we are proposing to include the desired provisions in 40 CFR 49.159. The proposed provisions are very similar to the part 124 provisions, although they have been modified to better suit the small sources that will be covered under the minor NSR program.

The major difference between Option 1 and Option 2 is that, under Option 1, permit decisions may be appealed to the EAB within 30 days after a final permit decision has been issued, and a final permit typically would not become effective until 30 days after issuance. Upon filing of a petition for review, the permit would be stayed (*i.e.*, not go into effect) until the EAB decides whether to review any condition of the permit and the reviewing authority takes any action required by the EAB. When the EAB has issued its final order on an appeal, a motion to reconsider the final order may be filed with the EAB within 10 days. Only after all administrative remedies under proposed 40 CFR 49.159 have been exhausted could the person(s) filing the petition seek judicial review.

Option 2. Option 2 has two major differences from the appeals process we proposed in Option 1. First, we propose under Option 2 that permits would become immediately effective upon issuance by the reviewing authority unless a later effective date is specified. Second, there is no requirement for seeking EAB review before filing a petition for review in the Federal Court of Appeals with jurisdiction of the tribal area. The final agency action for purposes of judicial review is the issuance of the final permit by the reviewing authority. The permit is not stayed by the filing of a petition for review. If a party challenging a permit would like to have your permit stayed, that party may seek a stay under the provisions of the Administrative Procedures Act (APA), 5 U.S.C. 705.

Because the regulatory language for Option 1 is more detailed than would be required for Option 2, the proposed regulatory text only addresses Option 1.

Advantages and Disadvantages of Options 1 and 2. The different approaches to appeals of reviewing authority decisions result from section 704 of the APA. This section provides that an agency action that is otherwise final is final for purposes of judicial review unless the agency otherwise requires by rule that a party must seek review by a superior authority within the agency and the agency's action is meanwhile inoperative. Therefore, if we were to require administrative review by the EAB or another part of EPA before allowing anyone to seek judicial review of a permit, then we would be required to stay the permit for the duration of the appeal. The two options balance the advantages of EAB review of permits with the desire to not unnecessarily and inappropriately delay your ability to construct or modify a new minor source.

On the one hand, minor NSR permits are for sources and modifications that emit less than new major sources and major modifications to major sources. An automatic stay would delay these smaller projects from going ahead when there is less environmentally at stake than in a challenge to a PSD or nonattainment major NSR permit. In those instances where there would be irreparable harm caused by a project proceeding under a flawed permit, there would still be available the opportunity to seek a stay under the APA.

On the other hand, review of permit decisions by the EAB serves as quality control over decisions by various parts of EPA. The EAB can ensure that the policies of the Administrator are applied consistently and appropriately in permit decisions. This may be important when a tribe receiving a delegation under this rule or an EPA Regional Office acting as the reviewing authority makes an error in applying the relevant rules.

One important consideration would be the timeliness of any review process. The EAB has specialized expertise in environmental issues, unlike courts with broader case-loads. The EAB is likely to process a petition for review faster than a Court of Appeals. Courts of Appeals necessarily give priority criminal appeals over civil regulatory matters and thus may delay addressing and resolving permit appeals. In either the EAB or the Courts of Appeals, it is unlikely that review of minor NSR permits will be expedited ahead of matters with greater environmental impact.

Under Option 2, you may be placed in a difficult situation of having a permit revoked after proceeding with construction while an appeal was pending. However, under Option 1, your project cannot proceed so long as the EAB appeal is pending.

We seek comment on how to balance these issues. Which option do you prefer and why? We invite comment on whether either Option 1 or Option 2 is more appropriate for general permits than individual minor source permits. We also ask for comment on whether there should be a short delay of 30 days before a permit is effective under Option 1 in order to allow for parties to seek administrative stays during reconsideration or to obtain a judicial stay before a permit goes into effect. Should we establish a mechanism for administrative reconsideration though the EAB, even when a party is seeking judicial review in the Court of Appeals? Any input on these issues with

supporting documentation will help us in structuring the final rule.

B. Major NSR Program in Nonattainment Areas of Indian Country

In today's rulemaking, we are proposing to establish a major NSR program for new major stationary sources and major modifications at existing major stationary sources in nonattainment areas of Indian country at 40 CFR 49.166 through 49.175. This program is designed to meet the requirements of part D of title I of the Act, and sources subject to this program would be required to comply with the requirements of 40 CFR part 51, appendix S (appendix S).

Appendix S is entitled ''Emission Offset Interpretative Ruling'' and sets forth preconstruction review requirements for major stationary sources and modifications locating in nonattainment areas where the State does not have an EPA-approved nonattainment major NSR program. In general, appendix S is a transitional nonattainment major NSR program that covers the period after an area has been newly designated as nonattainment, up until the State has amended its SIP's nonattainment major NSR program, as needed, to address the new nonattainment area. The requirements under appendix S are essentially the same as our requirements for State nonattainment major NSR programs at 40 CFR 51.165.

Primarily, we believe it is appropriate to apply appendix S provisions in Indian country for administrative convenience. Additionally, since appendix S generally applies in nonattainment areas where there is no approved nonattainment major NSR program, and since no tribe currently has such a program, we believe that appendix S should also apply in Indian country. Another reason for requiring sources subject to this program to comply with appendix S requirements is that the EPA Regional Offices (which will be implementing the program until an EPA-approved implementation plan is in place) and several major sources in Indian country are familiar with the implementation and provisions of appendix S.

We considered and rejected the option of amending appendix S to extend its application to Indian country, since we believe that sources in Indian country are more likely to look for regulations applicable to them under part 49, which is solely dedicated to regulations that apply in Indian country. We also considered drafting a parallel major NSR regulation to apply to sources in Indian country, but rejected this option since it would essentially re-propose appendix S provisions, which have been in effect outside of Indian country for many years. We wanted to avoid any potential confusion or possible perception that these parallel regulation requirements would be different than the appendix S requirements.

It is important to keep in mind that, in this rulemaking, we are only seeking comment on our general approach of requiring sources subject to the major NSR program in Indian country to be subject to the provisions of appendix S. While we will consider any compelling rationale or justification from a commenter that a particular provision in appendix S is not appropriate for Indian country, we will not entertain general comments on the appendix S provisions, since this transitional program has been implemented in States across the country for many years.

1. What are the requirements for major source permitting under appendix S?

Pursuant to paragraph IV of appendix S, a reviewing authority may issue a permit for a new major source or a major modification locating in a nonattainment area, if it complies with the following conditions:

- The new major source or a major modification meets the LAER for that source utilizing add-on controls or pollution prevention measures.
- The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same State as the proposed source are in compliance with (or under a federally-enforceable compliance schedule for) all applicable emission limitations and standards under the Act.
- Emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are obtained such that there will be reasonable progress towards attainment of the applicable NAAQS. Only intrapollutant emission offsets will be acceptable (*e.g.*, NOx for NOx).
- The emission offsets provide a net air quality benefit in the affected area.

2. What are the options we are proposing to address the lack of available offsets in Indian country?

Tribal representatives have repeatedly stated that requirements for emission offsets are problematic in Indian country for the following reasons. Many tribes believe that transport is a major cause of pollution in Indian country. Tribes, with few exceptions, do not have many existing sources within their area of Indian country from which offsets can be obtained. In addition, administrative barriers may hinder tribal access to otherwise available offsets. Therefore, tribal representatives have advocated for additional flexibility to address offsets, such as the provision of NSR offset set-asides (which we expect would come from State offset pools or banks). Tribal representatives have raised these and other concerns in discussions on implementation of the 8-hour ozone and $PM_{2.5}$ standards, and in comments on the 8-hour ozone implementation rule.[8]

We recognize the unique circumstances that tribes face. Unlike States that have a SIP, a huge industrial base with several hundred existing sources, and a broad range of measures to attain and maintain NAAQS, a tribe generally has neither a TIP nor many existing sources from which to generate offsets. Under these circumstances, we are proposing two options to address the lack of availability of offsets for tribes: (1) The Economic Development Zone (EDZ) option and (2) the appendix S, paragraph VI option. We also are requesting comment on other potential options for offset relief in Indian country.

Economic Development Zone Option. We would rely on section 173(a)(1)(B) of the Act wherein the Administrator, in consultation with the Secretary of Housing and Urban Development (HUD), would identify areas in Indian country as EDZs such that sources subject to major NSR located in EDZs in Indian country would be exempt from the offset requirement in section 173(a)(1)(A) of the Act.

Section 173(a)(1) of the Act provides for the issuance of permits to construct and operate a new or modified major stationary source if the reviewing authority determines that (A) ''* * * sufficient offsetting emissions reductions have been obtained * * *'' or (B) ''in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which

[8] For example, see the letter from Bill Grantham, National Tribal Envrionmental Council, to docket EPA–HQ–OAR–2003–0076, providing comments on the proposed 8-hour ozone implementation rule (66 FR 32802).

exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172(c).''

Once the Administrator has identified an area that should be targeted for economic development in consultation with HUD, major sources that construct or modify within that area are relieved of the offset requirement if the State/tribe can demonstrate that the new permitted emissions are consistent with the achievement of reasonable further progress pursuant to section 172(c)(4) of the Act, and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

We understand that HUD's Initiative for Renewal Communities, Urban Empowerment Zones, and Urban Enterprise Communities generally require that participating communities demonstrate pervasive poverty, high unemployment, and general distress throughout the designated area. The U.S. Department of Agriculture requires similar eligibility criteria for participating communities located in rural areas. We believe that many areas of Indian country may meet these criteria and hence could qualify for this offset relief provision. We seek comment on whether these criteria are appropriate for use in identifying EDZs in Indian country and if we should consider any other criteria.

We are also proposing to have the Administrator consult with HUD only once to develop a general set of approval criteria, such that a consultation is not required every time a tribe applies for its area of Indian country to be designated as an EDZ. EPA would provide assistance as needed for a tribe to complete an EDZ designation request. Once the Administrator approves such a request from a tribe, a new major source or a major modification locating in that EDZ would be exempt from the offset provisions. We seek comment on this approach for providing offset relief.

Appendix S, Paragraph VI Option. Paragraph VI of appendix S notes that in some cases, the dates for attainment of the primary or secondary NAAQS may not have passed. In such cases, appendix S provides that a new source locating in a nonattainment area may be exempt from the requirements of paragraph IV.A of appendix S (discussed in section IV.B.1 of this preamble), including the offset requirement, if the following conditions are met:

- The new source complies with the applicable implementation plan emission limitations;
- The new source will not interfere with the attainment date for a regulated NSR pollutant; and
- We have determined that the preceding two conditions are satisfied and such determination is published in the **Federal Register**.

Tribes would be able to use this option for offset relief for the 8-hour ozone and PM2.5 NAAQS. For instance, the attainment dates for 8-hour ozone nonattainment areas range from 2007 for marginal areas to 2021 for severe areas. Hence, a new major source or a major modification locating in such a nonattainment area prior to the attainment date may be exempt from the requirements of paragraph IV of appendix S, if the associated conditions are met.

It is important to note that this option would provide only temporary offset relief because it would cease to be available once the attainment date for a pollutant has passed. For instance, this option would not be available to marginal 8-hr ozone nonattainment areas after 2007. We seek comment on this paragraph VI option for offset relief.

We are seeking comment on other potential options for addressing the lack of availability of offsets in Indian country.

3. What are the proposed public participation requirements for this program?

We believe that the public participation requirements of 40 CFR 51.161 apply to permitting under appendix S. Additionally, for the nonattainment major NSR program, we are proposing detailed public notice requirements at 40 CFR 49.171. The proposed requirements for the nonattainment major NSR program are very similar to those proposed for the minor NSR program at 40 CFR 49.157. *See* section IV.A.11 for more information on the proposed requirements.

4. How do I meet the statewide compliance certification requirement of the Act?

Pursuant to the statewide compliance certification requirements of section 173(a)(3) of the Act, an owner or operator of a proposed new or modified major stationary source must demonstrate that all other major stationary sources under her/his control in the same State are in compliance or on a schedule for compliance with all emission limitations and standards of the Act. It is important to recognize that the proposed rules will not impact this statewide compliance certification requirement. However, in the context of Indian country, we are seeking comments on whether this requirement should be expressed as an Indian country-wide compliance certification or remain a statewide certification. In other words, should you be required to certify that all your sources in the State where your proposed source is locating are in compliance, or that all your sources in all of Indian country are in compliance?

Note that we are proposing a minor change to appendix S that is related to the ''emission limitations and standards of the Act.'' Existing paragraph II.B of appendix S requires the reviewing authority to review each proposed new major source and major modification to determine whether it will meet ''any applicable new source performance standard in 40 CFR part 60, or any national emission standard for hazardous air pollutants in 40 CFR part 61.'' While we have incorporated this requirement into proposed 40 CFR 49.169(a), we believe that it should be expanded to include the newer national emission standards for hazardous air pollutants codified at 40 CFR part 63 (commonly referred to as MACT standards). Accordingly, we are proposing to revise paragraph II.B of appendix S to add these standards under the Act, and proposed 40 CFR 49.169(a) would match the revised language of this paragraph.

V. Legal Basis, Statutory Authority, and Jurisdictional Issues

A. What is the basis for our authority to implement these programs?

Today's proposed rules are intended to fill a regulatory gap in the protection of air quality in Indian country. Although many States have developed regulatory programs for minor sources, those programs do not apply in Indian country unless explicitly approved by EPA for such areas. In addition, there is no Federal minor NSR program or major nonattainment NSR program in Indian country. Part D of title I of the Act requires that each SIP include preconstruction review and permitting rules for the construction and operation of new and modified major stationary sources located in designated nonattainment areas. The TAR authorizes eligible Indian tribes to implement EPA-approved nonattainment NSR (part D of title I of the Act), PSD (part C of title I of the Act), and other programs under the Act in the same manner as States. However, if Indian tribes are unable, or choose not, to develop a nonattainment NSR program in a TIP, we will implement the program where necessary or

appropriate. Today's proposed requirements are intended to provide the mechanism for implementation of the Federal major nonattainment NSR and minor NSR programs in Indian country.

The purpose of the proposed rules is to ensure that the NSR program is implemented throughout the United States and that any economic growth occurring in Indian country will do so in harmony with the preservation of existing clean air resources. Today's proposed rules provide both Indian tribes and businesses operating or considering locating in Indian country an understanding of the NSR programs for stationary sources. They also provide businesses and tribes procedures to comply with the major nonattainment NSR and minor NSR programs.

The Act gives us the authority to protect the Nation's air resources. Furthermore, title I of the Act requires that the NSR program be established to protect public health and welfare, national parks, and wilderness areas as new sources of pollution are built or existing sources are modified. The program is designed to ensure that emissions will be well controlled and that there will be protection of the NAAQS in Indian country. We understand that not all tribes have the resources to design and implement NSR programs; therefore, in today's proposal, we are providing a Federal program to apply in Indian country and that tribes may use as a model if they choose to develop their own implementation programs and obtain our approval.

Under today's proposed rule, the Federal program at 40 CFR 49.151 through 49.165 for minor stationary sources would apply throughout Indian country, except where we explicitly approve an implementation plan for such programs. The Federal rule at 40 CFR 49.166 through 49.175 for new and modified major stationary sources in nonattainment areas located in Indian country would likewise apply in an area of Indian country until an implementation plan has been approved by us.

As discussed previously, the Act provides us with broad authority to protect air resources throughout the Nation, including air resources in Indian country. *See*, for example, the preamble discussion for the proposed and final TAR (59 FR 43956, 43958–61, August 25, 1994; 63 FR 7254, 7262–64, February 12, 1998) and the preamble discussion for the proposed revisions to the part 71 Federal operating permits program for Indian country (62 FR 13748, 13750, March 21, 1997). In the preambles to the proposed and final TAR, we discussed generally the legal basis under the Act for EPA and tribal regulation of sources of air pollution in Indian country. We concluded that the Act constitutes a statutory delegation of Federal authority to eligible tribes over all sources of air pollution within the exterior boundaries of their reservations.

Further, under the Act, tribes may also apply to administer tribal air quality programs for non-reservation areas over which they can show jurisdiction.[9] *See* 63 FR 7254–7259, 59 FR 43958–43960, *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000), cert. den., 532 U.S. 970 (2001).

In the preamble to the TAR, we also concluded that the Act authorizes us to protect air quality throughout Indian country. *See* 63 FR 7262, 59 FR 43960–43961 citing sections 101(b)(1), 301(a), and 301(d) of the Act.

In addition, sections 301(d) and 110(o) of the Act give the tribes the authority to develop their own tribal programs. We encourage eligible tribes to develop their own minor and major nonattainment NSR programs for incorporation into their TIPs. In the absence of EPA-approved programs, we believe that, in most cases, it would be neither practical nor administratively feasible for us to develop and implement a separate program for each area of Indian country. As a result, we are proposing to implement a flexible FIP for Indian country that provides new and modified minor sources and major sources in nonattainment areas with procedures to demonstrate that they will be operating in a manner that is protective of air resources and the NAAQS.

Section 301(a) of the Act provides us broad authority to issue such regulations as are necessary to carry out the mandates of the Act. Further, several provisions of the Act call for Federal implementation of a program where, for example, a State, or in this case a tribe, fails to adopt a program or adopts an inadequate program. *See,* for example, sections 110(c)(1), 502(d)(3), and 502(i)(4) of the Act. These provisions exist in part to ensure that the benefits of the Act would be realized throughout the United States, whether or not local governments choose to participate in implementing the Act. Especially in light of the problems associated with transport of air pollution across State and tribal boundaries, it follows that Congress intended that we have the authority to operate a Federal program in the absence of an adequately implemented EPA-approved program. *See,* for example, 59 FR 43958–61, August 25, 1994; 62 FR 13750, March 21, 1997; and 63 FR 7262–64, February 12, 1998.

This interpretation is most evident from Congress' grant of authority to the EPA under section 301(d)(4) of the Act. Section 301(d)(4) authorizes the Administrator to directly administer provisions of the Act so as to achieve the appropriate purpose where tribal implementation of those provisions is inappropriate or administratively infeasible. We determined that it is inappropriate to subject tribes, among other things, to the mandatory submittal deadlines and to the related Federal oversight mechanisms in section 110(c)(1) of the Act, which are triggered when we make a finding that States have failed to meet required deadlines or disapprove a plan submittal. *See* 40 CFR 49.4(d).

By determining that tribes should not be treated similarly to States for purposes of the specific FIP obligation under section 110(c)(1) of the Act, we are not relieved of the general obligation under the Act to ensure the protection of air quality throughout the Nation, including throughout Indian country. Rather, consistent with the provisions of sections 301(a) and 301(d)(4) of the Act, we expressed our intent to promulgate

[9] We believe that in the context of programs under the Act, States generally lack the authority to regulate air quality in Indian country. *See Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 527 fn. 1 (1998) (''Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States.''), *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987), and *HRI* v. *EPA,* 198 F.3d 1224 (10th Cir. 2000); see also discussion in EPA's final rule for the Federal operating permits program (64 FR 8251–8255, February 19, 1999). To provide additional certainty to regulated entities, we believe it is helpful to clarify the extent to which State NSR programs have force in Indian country. We make clear today that we interpret past approvals and delegations of NSR programs as not extending to Indian country unless the State has made an explicit demonstration of jurisdiction over Indian country, and we have explicitly approved or delegated the State's program for such area. This is consistent with Congress' requirement that we approve State and tribal programs only where there is a demonstration of adequate authority. See sections 110(a)(2)(E), 110(o), and 301(d) of the Act and 40 CFR part 49. Since States generally lack the authority to regulate air resources in Indian country, we do not believe it would be appropriate for us to approve State programs under the Act as covering Indian country where there has not been an explicit demonstration of adequate jurisdiction and where we have not explicitly indicated our intent to approve the State program for an area of Indian country. In State NSR program approvals and delegations, we generally were not faced with State assertions of authority to regulate sources in Indian country. However, to the extent States or others may have interpreted our past approvals or delegations that were not based on explicit demonstrations of adequate authority and did not explicitly grant approval in Indian country, as approvals to operate NSR programs in Indian country, we wish to clarify any such misunderstanding.

without unreasonable delay a FIP (where necessary or appropriate) to protect air quality if tribal efforts do not result in adoption and approval of tribal plans or programs. *See* 63 FR 7265, 40 CFR 49.11.

We propose to exercise our authority to administer the minor NSR permitting program and the nonattainment major NSR program in Indian country, which is generally the area over which a tribe may potentially receive approval of programs under the Act. As noted in the final TAR, we interpret the Act as establishing a territorial approach to implementation of the Act within Indian reservations by delegating to eligible tribes authority over all reservation sources without differentiating among the various categories of on-reservation lands (63 FR 7254–7258). In addition, the Act authorizes eligible tribes to implement tribal programs under the Act in non-reservation areas over which a tribe has jurisdiction, generally including all areas of Indian country (63 FR 7258–7259).

Under section 301(d)(4) of the Act, Congress authorized the EPA to maintain the territorial approach by implementing the Act in Indian country in the absence of an EPA-approved program. We believe that Congress authorized us, consistent with our Indian policy, to avoid the checkerboarding of reservations based on land ownership by federally implementing the Act over all reservation sources in the absence of an EPA-approved tribal program. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989) (implementation of the Act to be in a manner consistent with EPA's Indian policy). In addition, section 301(d)(4) authorized us to implement the Act in non-reservation areas of Indian country in order to fill any gap in program coverage and to ensure an efficient and effective transition to EPA-approved programs.

Our interpretation of section 301(d) of the Act as authorizing our implementation throughout Indian country is also supported by the legislative history. *See* S. Rep. No. 228, 101st Cong., 1st Sess. 80 (1989) (noting that section 301(d) of the Act authorizes the EPA to implement provisions of the Act throughout ''Indian country'' when there is no approved tribal program); Id. at 80 (noting that criminal sanctions are to be levied by the EPA, ''consistent with the Federal government's general authority in Indian country''); *Id.* at 79 (the purpose of section 301(d) is to ''improve the environmental quality of the air within Indian country in a manner consistent with the EPA Indian Policy'').

In order to further our commitment to use our authority under the Act to protect air quality throughout Indian country by directly implementing the Act's requirements, we are now exercising the rulemaking authority entrusted to us by Congress to directly implement the minor NSR permitting program and nonattainment major NSR permitting program throughout all areas of Indian country. *See* generally, *Chevron USA, Inc.* v. *NRDC*, 467 U.S. 837, 842–45 (1984).

B. How does a tribe receive delegation to assist EPA with administration of the Federal minor and major NSR rules?

Section 301(a)(1) of the Act provides that the Administrator is authorized to prescribe such regulations as are necessary to carry out his or her functions under the Act. Pursuant to this authority, proposed 40 CFR 49.160 and 49.172 of the minor and major NSR rules, respectively, provide that partial administration of the Federal NSR programs may be delegated to a tribal agency that submits a request for delegation which includes the information set forth in the proposed sections.[10] Any Federal requirements under these programs that are administered by the delegate tribal agency will be subject to enforcement by EPA under Federal law. Nothing in the proposed rules would require us to delegate administration of any aspect of the Federal program to a tribal agency.

As noted elsewhere, we have established a process in the TAR pursuant to section 301(d) of the Act for tribes to seek treatment in a similar manner as a State (TAS) for various provisions and programs of the Act. Under the procedures set forth in the TAR, tribes may seek to demonstrate eligibility for approval of tribal programs under the Act, including a tribal NSR program, under tribal law. The TAR allows tribes to seek approval for such programs covering their reservations or other areas within their jurisdiction. We recognize that some tribes may choose not to develop tribal NSR programs for submission to us for approval under the TAR, but that these tribes may still wish to assist us in implementing the Federal NSR program for their area of Indian country. By assisting us with administration of the Federal program, tribes remain appropriately involved in implementation of an important air quality program and may develop their own capacity to manage such programs in the future should they choose to do so. Proposed 40 CFR 49.160 and 49.172 of the minor and major NSR rules, respectively, provide tribal governments the option of seeking delegation from us of the administration of the Federal NSR program, or aspects of the program, for their area of Indian country. Such administrative delegation is to be distinguished from the TAS process under the TAR whereby tribes seek approval to run programs under tribal law. Tribes would not need to seek TAS under the TAR in order to request delegation of administration of aspects of these Federal NSR programs. Tribes would, however, need to provide the relevant application information described in those sections. In addition, program functions delegated under proposed 40 CFR 49.160 or 49.172 would remain part of the relevant FIP administered under Federal law. The delegate tribal agency would simply assist EPA with administration of the program to the extent of the functions delegated.

We have well-established processes for delegating our Federal authority to States for administering Federal rules under the Act, including conducting new source review under 40 CFR 52.21(u), and issuing Federal operating permits under 40 CFR 71.4(j) and 71.10. The process we would follow to delegate the administration of the Federal NSR program to a tribal agency is similar to the process we follow to delegate the administration of Federal programs to States. Prior to finalizing any delegation agreement with a tribal agency, we would consult with other Federal, State, tribal, or local governmental entities, or other governmental agencies in the area, as appropriate. Although sections 110(o) and 301(d) of the Act and the TAR authorize us to review and approve TIPs, neither the Act nor the regulations provide that approval of tribal programs under tribal law is the sole mechanism

[10] This information includes identifying the specific rules and provisions and the area of Indian country for which the delegation is requested. In addition, tribal agencies seeking delegation must provide a statement by the tribe's legal counsel or equivalent official including a statement that the tribe is recognized by the Secretary of the Interior, a descriptive statement demonstrating that the tribe is currently carrying out substantial governmental duties and powers over a defined area (this statement should be consistent with the type of information described in 40 CFR 49.7(a)(2), which relates to the separate process by which tribes apply to be treated in a similar manner as States for various purposes under the Act), a description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which the delegation is requested, and a descriptive statement demonstrating that the tribal agency has, or will have, the technical capability and adequate resources to administer the Federal rules and provisions for which the delegation is requested.

available for tribal agencies to take on permitting responsibilities. Accordingly, we propose to exercise our discretion to delegate administration of the Federal NSR program to interested tribal agencies satisfying the requirements of proposed 40 CFR 49.160 and 49.172.

The delegation of administration of the Federal NSR program to tribes proposed in these rules is to be distinguished from our interpretation that the Act constitutes a delegation of Federal authority from Congress to tribes over their reservations as described in the TAR. *See* 63 FR 7254–59. As described in the preamble to the TAR, it is our position that the TAS provision of the Act constitutes a statutory delegation of authority to eligible tribes over their reservations. As described earlier, the TAR established procedures for our approval of tribal eligibility applications to operate the programs of the Act under tribal law. Where we approve a tribal eligibility application and approve a tribal NSR program, the approved tribe will manage the program under tribal law, and the tribal program becomes federally enforceable. Among the required elements of a tribal eligibility application under the TAR is a demonstration of the tribe's authority, including appropriate enforcement authority, to regulate air quality for the areas to be covered by the program. For air resources within the exterior boundaries of a tribe's reservation, the tribe may rely on the Congressional delegation of Federal authority to operate approved tribal programs. Tribes may also attempt to demonstrate authority to operate the programs of the Act over other areas outside of their reservations, generally including non-reservation areas of Indian country.

In contrast, the delegation approach proposed in these rules provides for us to delegate administration of the Federal program operating under Federal law to interested tribes that provide the information described in proposed 40 CFR 49.160(b)(1) and 49.172(b)(1). Since this program operates throughout Indian country under Federal authority, tribes would not need to demonstrate either Congressionally-delegated authority over air resources within the exterior boundaries of their reservations or authority of non-reservation areas of Indian country. Instead, tribal agencies would assist us in implementing the Federal program by taking delegation of the administration of particular activities conducted under our authority in Indian country. Under proposed 40 CFR 49.160(b)(1)(iii)(C) and 49.172(b)(1)(iii)(C), tribes would only need to show that their laws provide adequate capacity and authority to carry out the delegated activities. For example, where a tribe seeks administrative delegation for permit issuing activities of the Federal program, the tribe may, among other things, need to show it has in place an appropriate agency with legal authority to review applications and issue permits on behalf of the delegate tribal government. For these administratively delegated programs, Federal program requirements will continue to be subject to enforcement by us, not the delegate tribal agency, under Federal law. Administrative appeals of permitting decisions would also continue to be made directly to the EAB under our administrative procedures with any subsequent judicial review to be conducted in Federal court. In the proposed rules we make it clear that we will not delegate enforcement or appeal components of the program to tribal agencies.

In order to be delegated authority to administer the proposed rules for a particular area of Indian country, the authorized representative of a tribal agency must demonstrate that it has the authority and technical capability to carry out the provisions of the rules for which delegation is requested. When delegation is approved, a Partial Delegation of Administrative Authority Agreement between the Administrator and the tribal agency will set forth the terms and conditions of the delegation, and will also specify the rules and provisions that the tribal agency is authorized to implement. Once the delegation becomes effective, the tribal agency will have the authority under the Act, to the extent specified in the Agreement, to administer the rules in effect for the particular area of Indian country, and to act on behalf of the Administrator. The Federal requirements administered by the delegate tribal agency will be subject to enforcement by us under Federal law.

When we have delegated administration of the portion of the Federal minor or major NSR program that includes receipt of permit application materials and preparation of draft permits, the delegate tribal agency must provide us a copy of each permit application (including any application for permit revision) and each draft permit.[11] In any such delegation, we retain the authority to object to the issuance of any permit that we determine not to be in compliance with the requirements under the program or other requirements pursuant to regulations under the Act. For any such objections, we will outline the reasons for the objection in writing, and we will provide a copy of the written statement to the permit applicant. The delegate tribal agency may not issue a permit if we object to its issuance in writing. The delegate tribal agency may submit a revised draft permit to us in response to the objection. However, if it does not do so within 90 days, we will issue or deny the permit in accordance with the requirements of the Federal minor or major NSR program, as applicable.

[11] The proposed minor and major NSR programs provide that the delegate tribal agency may require the applicant to provide a copy of the permit application directly to us. In addition, with our consent, the delegate tribal agency may submit to us a permit application summary form and any relevant portion of the permit application.

C. What happens to permits previously issued by States to sources in Indian country?

As discussed previously, section 301(d) of the Act recognizes the authority of eligible tribes to implement the Act throughout their reservations and other areas under their jurisdiction. Historically, sources in some areas of Indian country may have received permits from States operating EPA-approved programs. However, States generally lack jurisdiction under the Act over these facilities and generally were not authorized under the Act to issue such permits in Indian country. We also recognize that just as it required many years to develop State and Federal programs to cover lands subject to State jurisdiction, it will also require time to develop tribal and Federal programs to cover areas of Indian country.

We have also mentioned before that we will ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4) [of the Act], if a tribe does not submit a tribal implementation plan. * * *'' *See* 40 CFR 49.11(a). Today's proposed rulemaking would provide a mechanism to change State permits issued to major sources of regulated NSR pollutants in nonattainment areas of Indian country to Federal major NSR permits. If you own or operate a major stationary source with a State-issued nonattainment major NSR permit, you must apply to convert the permit to a Federal permit under this program within 1 year of the effective date of this program. In this case, you would not be subject to any additional requirements under this program. *See* proposed 40 CFR 49.168(b).

The requirements contained in these State-issued permits have been relied on for protection of attainment and

maintenance of air quality in these nonattainment areas. We believe that transforming the State permits in to Federal major NSR permits for major sources in Indian country is appropriate to protect air quality in Indian country, as the tribes take on the effort to develop and/or run their own programs.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this is a ''significant regulatory action''. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned OMB Control Number 2060–0003 (EPA ICR No. 1230.13).

Certain records and reports are necessary for the tribal agency (or the EPA Administrator in non-delegated areas), for example, to: (1) Confirm the compliance status of stationary sources, identify any stationary sources not subject to the standards, and identify stationary sources subject to the rules; and (2) ensure that the stationary source control requirements are being achieved. The information would be used by the EPA or tribal enforcement personnel to (1) Identify stationary sources subject to the rules, (2) ensure that appropriate control technology is being properly applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, the delegate tribes can decide which plants, records, or processes should be inspected.

The major nonattainment NSR rule would have little impact on existing major stationary sources in Indian country because it would only affect such owners and operators if they propose a major modification; none are expected. The proposed rule would only result in an administrative change for new major sources in Indian country because, although the regulatory mechanism to issue permits is not yet available in the form of either a Federal nonattainment NSR rule or a TIP, we would be required to implement the program in Indian country, and would otherwise have to do source-specific FIP. As a result, there would no new or additional burden on industry.

With regard to the minor source permitting rule, the average capital cost per facility for the one-time activities is $13,088 per source; annualized, this cost is $1,863 per year per source. The total of the various annualized and recurring costs is an average of $7,598 per year per source. The annual reporting and record keeping cost burden is a total annualized capital/startup costs of $77,000, and total annual costs (operation and maintenance) of $235,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2003–0075. Submit any comments related to the ICR for this proposed rule to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 21, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by September 20, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Today's proposed rule only potentially affects small businesses, not small governments or small organizations.

The proposed rule potentially affects six types of stationary sources in Indian Country:

- New and modified minor sources of regulated NSR pollutants;

- Sources of regulated NSR pollutants choosing to accept enforceable emission limitations to avoid major source regulations (synthetic minors);
- Sources of HAP choosing to accept enforceable emission limitations to avoid major source regulations (synthetic minors);
- Minor modifications to major sources of regulated NSR pollutants;
- New major sources of regulated NSR pollutants in nonattainment areas; and
- Major modifications to major sources of regulated NSR pollutants in nonattainment areas.

The second, third, fifth, and sixth types of sources are projected to incur no incremental costs or to experience cost savings due to the proposed rule. The rule results in only an administrative change for new major sources in nonattainment areas. In the absence of the proposed rule, there is no regulatory mechanism to issue permits. We would be required to implement the program in Indian country, and such new major sources would have to be permitted through a source-specific FIP. The proposed rule would provide a regulatory mechanism for permitting such sources; because the compliance requirements are expected to be unchanged by the proposed rule, no change in control costs is expected. Because the permitting process may be less uncertain under the proposed rule, new and modifying major sources could potentially experience cost savings compared to baseline conditions. Choosing to accept enforceable emission limitations (become a synthetic minor) is entirely optional; rational firms would only make this choice if it resulted in a cost savings. For these four types of sources, therefore, no adverse economic impacts are expected to any businesses, including small businesses.

The screening assessment therefore focused on costs and impacts for new and modified minor sources and minor modifications at major sources. To analyze potential impacts to small companies owning such sources, we first estimated the number of new sources that would be sited in Indian country over the period 2004 through 2010, the time period selected for the analysis.[12] Generally, data on minor sources in Indian country is very limited. We conducted an exhaustive search for information available from EPA databases, the Small Business Administration, and EPA Regional Offices. We also encouraged the tribes to participate in the rulemaking, and inquired whether tribes had any information on minor sources but no data were received. We concluded that the information in 11 tribal emissions inventories maintained by EPA/OAQPS provided the best characterization of the types of minor sources that currently exist and the types of new minor sources that might be sited in Indian country in the future. We collected data from the Economic Census (1997) on the number of establishments of each type in each State, and allocated the establishments to Indian country based on tribes' share of State income. Then, we projected the number of new minor sources of each type that would be created in Indian country by applying the estimated growth rate for American Indian/Alaska Native (AI/AN) population in each State to the estimated baseline number of sources in Indian country in the State. Over the period from promulgation (2004) through (2010), we estimate that 288 new minor sources will be created in Indian country. We used data from financial databases to compute the share of companies in each sector that are owned by small businesses (based on the Small Business Administration small business size definitions at 13 CFR part 121). Assuming that the same share of new minor sources will be owned by small businesses, we estimate that 164 new minor source facilities, owned by 143 small businesses, will be created in Indian country during the period. Additionally, we project that 112 modifications to existing minor sources will occur during the period 2004 through 2010. Of these, we estimate that 51 small businesses will own 62 existing minor sources undergoing modifications during the period.

Finally, we estimate that one major source in Indian country will make a minor modification to its operations each year. Thus, we estimate that seven minor modifications to existing major sources will occur over the period 2004 to 2010. Of these, we estimate that 3 of these major sources will be owned by 3 small businesses.

Table 3 below summarizes the estimated numbers of affected facilities and small businesses.

TABLE 3.—PROJECTED NUMBER OF AFFECTED SMALL BUSINESSES AND ESTIMATED COSTS INCURRED BY SMALL BUSINESSES

[2004 through 2010]

Source type	Projected number of sources owned by small businesses	Estimated number of small businesses	Estimated costs incurred by small businesses ($ million) [a]
New Minor Sources	164	143	$2.68
Modified Minor Sources	62	51	0.97
Minor Modifications to Major Sources	3	3	0.02
Total	229	197	3.62

[a] Based on Year 2000 dollars.

To conduct our screening analysis of impacts on small businesses, we compared the estimated costs of compliance for each type of source in each sector with typical small business sales in each sector.

Based on the screening analysis of impacts on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. Our analysis estimates that, of the projected 164 new minor source facilities owned by 143 small businesses, two (a natural gas compressor station and a landfill) will experience costs greater than 1 percent of sales and none will experience costs exceeding 3 percent of sales due to the proposed rule. Of the estimated 62 existing minor source facilities owned

[12] Based upon our evaluation of current Tribal emission inventories and the application of updated growth rates, we have determined that the analysis has not changed significantly to date; therefore, the May, 2003 analysis for the period 2004–2010 remains valid for the EIA, the associated ICR supporting statement and this RFA. This analysis will be updated for the final rulemaking.

by 51 small businesses projected to perform minor modifications that result in emissions increases greater than the minor NSR thresholds in Table 1, three may experience costs approximately equal to 1 percent of sales; none experience costs exceeding 3 percent of sales. The three major source facilities owned by small businesses projected to perform minor modifications during the period 2004 through 2010 will incur only the costs of obtaining a minor source permit, which represent a very small share of baseline company sales. Therefore, of these 229 potentially affected facilities owned by an estimated 197 small businesses, only 5 are projected to incur costs exceeding 1 percent of company sales, and none is projected to incur costs greater than 3 percent of company sales. Thus, the proposed rule will not impose a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this proposed rule for any 1 year has been estimated to be $312,000. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

The proposed rule does not require that any tribe accept delegation or develop their own permitting program; thus, it does not impose any burden on small tribes. We recognize, however, that some small tribes may choose to assist EPA with administration of the minor NSR program on their reservations. We thus analyzed the costs to small tribes if they did make this choice, using small tribes that have chosen to develop their own air programs as examples of the types of tribes that might choose to assist EPA with administration of the minor new source permitting program. We found that the cost per tribal member was less than $1 per year, and represented less than 0.01 percent of the per capita income of tribal members. Thus, if the costs of developing and implementing a permitting program for new minor sources were borne by the tribes' members, it would not be a significant burden to them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires us 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.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that this proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with our policy to promote communications between us and State and local governments, we specifically solicit comment on this proposed rule from State and local officials. We felt it was important to ensure that the State and local air pollution control agencies and small business concerns had an opportunity to interact with development of this rule. To that end, we had two meetings with the STAPPA/ALAPCO to present the draft preamble and rule. We also met with the National Federation of Independent Business and provided outreach material through the small business ombudsman's office to get input from the small businesses that might be affected by this rule.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The EPA has concluded that this rule will have tribal implications, since it provides two preconstruction air permitting rules for stationary sources in Indian Country. These rules will be

implemented by EPA, or a delegate tribal agency assisting EPA with administration of the rules, until replaced by an EPA-approved tribal implementation plan. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

The EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. In undertaking this rulemaking effort we wanted to ensure that the tribes were included in the rulemaking process from the beginning of the rule development effort. On June 24, 2002, we sent letters to tribal leaders seeking their input on how we could best consult with the tribes on the rulemaking effort.

We received responses from 75 tribes. Of these 75 tribes, 69 designated an environmental staff member to work with us on developing the rule. Aside from the staff designated to help with the rulemaking process, many tribal leaders wished to be kept informed of the rule development. Many of the tribal leaders indicated that they wished to be kept informed through e-mail, meetings with the EPA Regional Offices, newsletters, and Web sites. However, 53 percent of the tribal leaders also requested direct phone calls or conference calls to discuss the subject. Only 16 percent of the respondents requested face-to-face consultation. Even among the tribes requesting face-to-face consultation, there was some degree of latitude, with only six tribes requesting senior EPA staff to meet with tribal leaders.

As a result of this feedback we developed a consultation/outreach plan which included three meetings held at the reservations of the Menominee Tribe in Wisconsin, the Mohegan Tribe in Connecticut, and the Chehalis Tribe in Washington. A fourth meeting was held in conjunction with the Institute of Tribal Environmental Professionals' (ITEP) anniversary meeting in Flagstaff, Arizona. In addition to conducting these national meetings, we also visited tribal environmental staff on tribal lands, where time and travel permitted. Over 30 tribes attended these meetings. We have also provided outreach to the tribes in numerous national and regional forums including the National Tribal Forums put on by the Institute of Tribal Environmental Professionals, two National Tribal Air Association meetings, and at meetings with tribal consortia, such as the National Tribal Environmental Council, United Southern and Eastern Tribes, Inter Tribal Environmental Council, Inter Tribal Council of Arizona, and others.

In addition to the meetings, we also have an ongoing workgroup of tribal environmental staff that has worked with us on developing these rules. We propose to continue with this consultation and outreach process until we promulgate this rulemaking package. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. Furthermore, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211,''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that the two preconstruction air quality regulations proposed in this FIP should not raise any environmental justice issues. These regulations would provide regulatory certainty and fill a regulatory gap in Indian Country and result in emissions reductions from sources complying with these regulations. Consequently, the regulations should result in some health benefits to persons living in Indian Country, many of whom live in low-income and minority communities. Therefore, we believe that these regulations would not have a disproportionate adverse effect on the health or safety of minority or low income populations.

J. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

This proposed rule does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

VII. Statutory Authority

The statutory authority for this proposed action is provided by sections 101, 110, 112, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7410, 7412, 7414, 7416, and 7601).

List of Subjects

40 CFR Part 49

Administrative practices and procedures, Air pollution control, Environmental protection, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 51

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: August 9, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—[AMENDED]

1. The authority citation for part 49 continues to read as follows:

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

Subpart C—[Amended]

2. Subpart C of Part 49 is amended by adding an undesignated center heading and §§ 49.151 through 49.160, and adding and reserving §§ 49.161 through 49.165 to read as follows:

Federal Minor New Source Review Program in Indian Country

§ 49.151 Program overview.

(a) *What constitutes the Federal minor new source review (NSR) program in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal minor NSR program in Indian country (or ''program'') consists of §§ 49.151 through 49.165.

(b) *What is the purpose of this program?* This program has the following purposes:

(1) It establishes a preconstruction permitting program for new and modified minor stationary sources (minor sources) and minor modifications at major stationary sources located in Indian country to meet the requirements of section 110(a)(2)(C) of the Act.

(2) It also provides a mechanism for an otherwise major stationary source to voluntarily accept restrictions on its potential to emit to become a synthetic minor source. This mechanism also may be used by an otherwise major source of Hazardous Air Pollutants (HAPs) to voluntarily accept restrictions on its potential to emit to become a synthetic minor HAP source. Such restrictions must be enforceable as a practical matter.

(3) It sets forth the criteria and procedures that the reviewing authority (as defined in § 49.152(d)) will use to administer the program.

(c) *When and where does this program apply?* (1) The provisions of this program apply in Indian country where there is no EPA-approved minor NSR program, beginning on [60 days from publication of final rule].

(2) The provisions of this program cease to apply in an area covered by an EPA-approved implementation plan on the date that our approval of that implementation plan becomes effective, provided that the implementation plan includes provisions that comply with the requirements of section 110(a)(2)(C) of the Act for the construction and modification of minor sources and minor modifications at major stationary sources.

(d) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a stationary source:

(1) If you propose to construct a new minor source, a modification at an existing minor source, or a minor modification at an existing major stationary source that would be subject to this program, you must obtain a minor NSR permit under this program before beginning actual construction. If you commence construction after the effective date of this program without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

(2) If you construct or operate your source or modification not in accordance with the terms of your minor NSR permit, you will be subject to appropriate enforcement action.

(3) Issuance of a permit does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or FIP and any other requirements under applicable law.

(4) Nothing in this program prevents a tribe from administering a minor NSR permit program with more stringent requirements in an approved Tribal Implementation Plan (TIP).

(e) *What is the process for issuing permits under this program?* For the reviewing authority to issue a final permit decision under this program (other than a general permit under § 49.156), all the actions listed in paragraphs (e)(1) through (8) of this section need to be completed. This paragraph (e) does not apply to general permits.

(1) You must submit a permit application that meets the requirements of § 49.154(a).

(2) The reviewing authority determines completeness of the permit application as provided in § 49.154(b).

(3) The reviewing authority determines the appropriate emission limitations for your affected emissions units under § 49.154(c).

(4) In those rare instances where the reviewing authority has reason to be concerned that the construction of your minor source or modification would cause or contribute to a NAAQS or Prevention of Significant Deterioration (PSD) increment violation, you must submit an air quality analysis upon request by the reviewing authority.

(5) The reviewing authority determines that the new or modified source will not cause or contribute to a NAAQS or PSD increment violation.

(6) The reviewing authority develops a draft permit that meets the permit content requirements of § 49.155(a).

(7) The reviewing authority provides for public participation according to the requirements of § 49.157.

(8) The reviewing authority either issues a final permit that meets the requirements of § 49.155(a), or denies the permit and provides reasons for the denial.

§ 49.152 Definitions.

(a) For sources of regulated NSR pollutants in nonattainment areas, the definitions in § 49.167 apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(b) For sources of regulated NSR pollutants in attainment or unclassifiable areas, the definitions in § 52.21 of this chapter apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(c) For sources of HAP, the definitions in § 63.2 of this chapter apply to the extent that they are used in this program (except for terms defined in paragraph (d) of this section).

(d) The following definitions also apply to this program: *Affected emissions units* means the following emissions units, as applicable:

(1) For a proposed new minor source, all the emissions units.

(2) For a proposed modification, the new, modified, and replacement emissions units involved in the modification.

(3) For an existing minor source applying for a minor source PAL, all the emissions units that emit the PAL pollutant. However, such units are considered affected emissions units only for the PAL pollutant.

Allowable emissions means ''allowable emissions'' as defined in § 52.21(b)(16) of this chapter, except that the allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

Emission limitation means a requirement established by the reviewing authority which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or

maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

Enforceable as a practical matter means that an emission limitation is both legally and practically enforceable as follows:

(1) An emission limitation is ''legally enforceable'' if the reviewing authority has the right to enforce it.

(2) Practical enforceability for an emission limitation in a permit for a source is achieved if the permit's provisions specify:

(i) A limitation and the emissions unit(s) at the source subject to the limitation;

(ii) The time period for the limitation (*e.g.*, hourly, daily, monthly, and/or annual limits such as rolling annual limits); and

(iii) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(3) For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions:

(i) Identify the types or categories of sources that are covered by the rule or general permit;

(ii) Where coverage is optional, provide for notice to the reviewing authority of the source's election to be covered by the rule or general permit; and

(iii) Specify the enforcement consequences relevant to the rule or general permit.

Environmental Appeals Board means the Board within the EPA described in § 1.25(e) of this chapter.

Indian country, as defined in 18 U.S.C. 1151, means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; [1]

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

[1] Under this definition, EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.

Indian governing body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Minor modification at a major stationary source means a modification at a major stationary source that does not qualify as a major modification under § 49.167 or § 52.21 of this chapter, as applicable.

Minor NSR threshold means any of the applicability cutoffs for this program listed in Table 1 of § 49.153.

Minor source plantwide applicability limitation (PAL) means a source-wide limitation on allowable emissions of a regulated NSR pollutant, expressed in tons per year, that is established for a minor source in a permit issued under § 49.155 and that is enforceable as a practical matter.

Minor stationary source or *minor source* means a source that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major stationary source levels in § 49.167 or § 52.21 of this chapter, as applicable. The term ''minor stationary source'' applies independently to each regulated NSR pollutant that the source has the potential to emit.

Modification means any physical or operational change at a source that would cause an increase in the allowable emissions of the affected emissions units for any regulated NSR pollutant or that would cause the emission of any regulated NSR pollutant not previously emitted. The following exemptions apply:

(1) A physical or operational change does not include routine maintenance, repair, or replacement.

(2) An increase in the hours of operation or in the production rate is not considered an operational change unless such increase is prohibited under any federally-enforceable permit condition or other permit condition that is enforceable as a practical matter.

(3) A change in ownership at a source is not considered a modification.

Potential to emit means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter. Secondary emissions, as defined at § 52.21(b)(18) of this chapter, do not count in determining the potential to emit of a source.

Reviewing authority means the Administrator, and may mean an Indian tribe in cases where a tribal agency is assisting EPA with administration of the program through a delegation.

Synthetic minor HAP source means a source that otherwise has the potential to emit HAPs in amounts that are at or above those for major sources of HAP in § 63.2 of this chapter, but that has taken a restriction so that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

Synthetic minor source means a source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major stationary sources in § 49.167 or § 52.21 of this chapter, as applicable, but that has taken a restriction so that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term ''synthetic minor source'' applies independently for each regulated NSR pollutant that the source has the potential to emit.

§ 49.153 Applicability.

(a) *Does this program apply to me?* The requirements of this program apply to you as set out in paragraphs (a)(1) through (5) of this section.

(1) *New and modified sources.* The applicability of the preconstruction review requirements of this program is determined individually for each regulated NSR pollutant that would be emitted by your new or modified source. For each such pollutant, determine applicability as set out in the relevant paragraph (a)(1)(i) or (ii) of this section. Flowcharts 1 through 6 of this section are provided as aids for making these applicability determinations.

(i) *New source.* Use the following steps to determine applicability for each regulated NSR pollutant. Flowchart 2 of this section addresses attainment and unclassifiable pollutants; Flowchart 4 of this section addresses nonattainment pollutants.

(A) *Step 1.* For the pollutant being evaluated, determine whether your proposed source is subject to review under the applicable major NSR program (that is, under § 52.21 of this chapter, under the Federal major NSR program for nonattainment areas in Indian country at §§ 49.166 through 49.75, or under a program approved by the Administrator pursuant to § 51.165 or § 51.166 of this chapter). If not, go to Step 2 (paragraph (a)(1)(i)(B) of this section).

(B) *Step 2.* Determine whether the source's potential to emit the pollutant that you are evaluating is greater than or equal to the corresponding minor NSR threshold in Table 1 of this section. If it is, you are subject to the preconstruction requirements of this program for that pollutant.

(ii) *Modification at an existing source.* If you propose to make a physical or operational change at an existing source, determine whether the change qualifies as a modification (as defined in § 49.152) using the procedures in paragraph (b) of this section to determine the increase in allowable emissions. If the change is a modification, use the following steps to determine applicability for each regulated NSR pollutant. Flowchart 3 of this section addresses attainment and unclassifiable pollutants; Flowchart 5 of this section addresses nonattainment pollutants. Flowchart 6 addresses minor NSR applicability. Note that if the physical or operational change is not a modification under this program, it may still be subject to some requirements under this program; *See* paragraphs (a)(2) through (5) of this section.

(A) *Step 1.* For the pollutant being evaluated, determine whether your proposed modification is subject to review under the applicable major NSR program. If not, go to Step 2 (paragraph (a)(1)(ii)(B) of this section).

(B) *Step 2.* Does your existing source have a minor source PAL for the pollutant that you are evaluating? If so, you are subject to the preconstruction requirements of this program for that pollutant. If not, go to Step 3 (paragraph (a)(1)(ii)(C) of this section).

(C) *Step 3.* Determine whether the increase in allowable emissions from the proposed modification (calculated using the procedures of paragraph (b) of this section) would be greater than or equal to the minor NSR threshold in Table 1 of this section for the pollutant that you are evaluating. If it is, you are subject to the preconstruction requirements of this program for that pollutant. If not, go to Step 4 (paragraph (a)(1)(ii)(D) of this section).

(D) *Step 4.* If any of the emissions units affected by your proposed modification currently has an annual allowable emissions limit for the pollutant that you are evaluating, determine whether the modification would increase any such unit's allowable emissions above its existing limit. If so, the proposed modification is subject to paragraph (a)(2) of this section. If not, your proposed modification is not subject to this program.

(2) *Increase in an emissions unit's annual allowable emissions limit.* If you propose a physical or operational change at your minor or major stationary source that would increase an emissions unit's allowable emissions of a regulated NSR pollutant above its existing annual allowable emissions limit, you must obtain an increase in the limit prior to making the change. For a physical or operational change that is not otherwise subject to review under major NSR or under this program, such increase in the annual allowable emissions limit can be accomplished through an administrative permit revision as provided in § 49.159(f).

(3) *Synthetic minor permits.* If you propose to establish a synthetic minor source or synthetic minor HAP source, you must apply for a permit under § 49.158. Additionally, if you currently own or operate such a source that was established by maintaining your actual emissions at less than 50 percent of the relevant major source threshold, you must obtain a synthetic minor permit under this program according to the requirements of § 49.158.

(4) *Minor source PALs.* If you propose to establish a minor source PAL for your existing minor source, you must apply for a permit under § 49.154.

(5) *Case-by-case maximum achievable control technology (MACT) determinations.* If you propose to construct or reconstruct a major source of HAPs such that you are subject to a case-by-case MACT determination under section 112(g)(2) of the Act, you may elect to have this determination approved under the provisions of this program. (Other options for such determinations include a title V permit action or a Notice of MACT Approval under § 63.43 of this chapter.) If you elect this option, you still must comply with the requirements of § 63.43 of this chapter that apply to all case-by-case MACT determinations.

(b) *How do I determine the increase in allowable emissions from a physical or operational change at my source?* Determine the resulting increase in allowable emissions in tons per year (tpy) of each regulated NSR pollutant after considering all increases and decreases from the change according to paragraph (b)(1) or (2) of this section, as applicable. A physical or operational change may involve one or more emissions units.

(1) For a change at a minor source with a minor source PAL, the emissions increase would be the PAL level after the change minus the PAL level prior to the change.

(2) For other changes, the total increase in allowable emissions resulting from your proposed change would be the sum of the following:

(i) For each new emissions unit that is to be added, the emissions increase would be the potential to emit of the emissions unit.

(ii) For each emissions unit with an allowable emissions limit that is to be changed or replaced, the emissions increase would be the allowable emissions of the emissions unit after the change or replacement minus the allowable emissions prior to the change or replacement. This may be a negative value for an emissions unit if the allowable emissions of the unit would be reduced as a result of the change or replacement.

(iii) For each unpermitted emissions unit that is to be changed or replaced, the emissions increase is the allowable emissions of the emissions unit after the change or replacement minus the potential to emit prior to the change or replacement. This may be a negative value for an emissions unit if its post-change allowable emissions would be less than its pre-change potential to emit.

(c) *What emissions units and activities are exempt from this program?* This program does not apply to the following emissions units and activities at a source that are listed in paragraphs (c)(1) through (10) of this section.

(1) Mobile sources.

(2) Air-conditioning units used for comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process.

(3) Ventilating units used for comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process.

(4) Heating units used for comfort that do not provide heat for any manufacturing or other industrial process.

(5) Noncommercial food preparation.

(6) Consumer use of office equipment and products.

(7) Janitorial services and consumer use of janitorial products.

(8) Internal combustion engines used for landscaping purposes.

(9) Bench scale laboratory activities, except for laboratory fume hoods or vents.

(10) Any emissions unit or activity that does not emit or have the potential to emit a regulated NSR pollutant or HAP, so long as that emissions unit or activity is not part of a process unit that emits or has the potential to emit a regulated NSR pollutant or HAP.

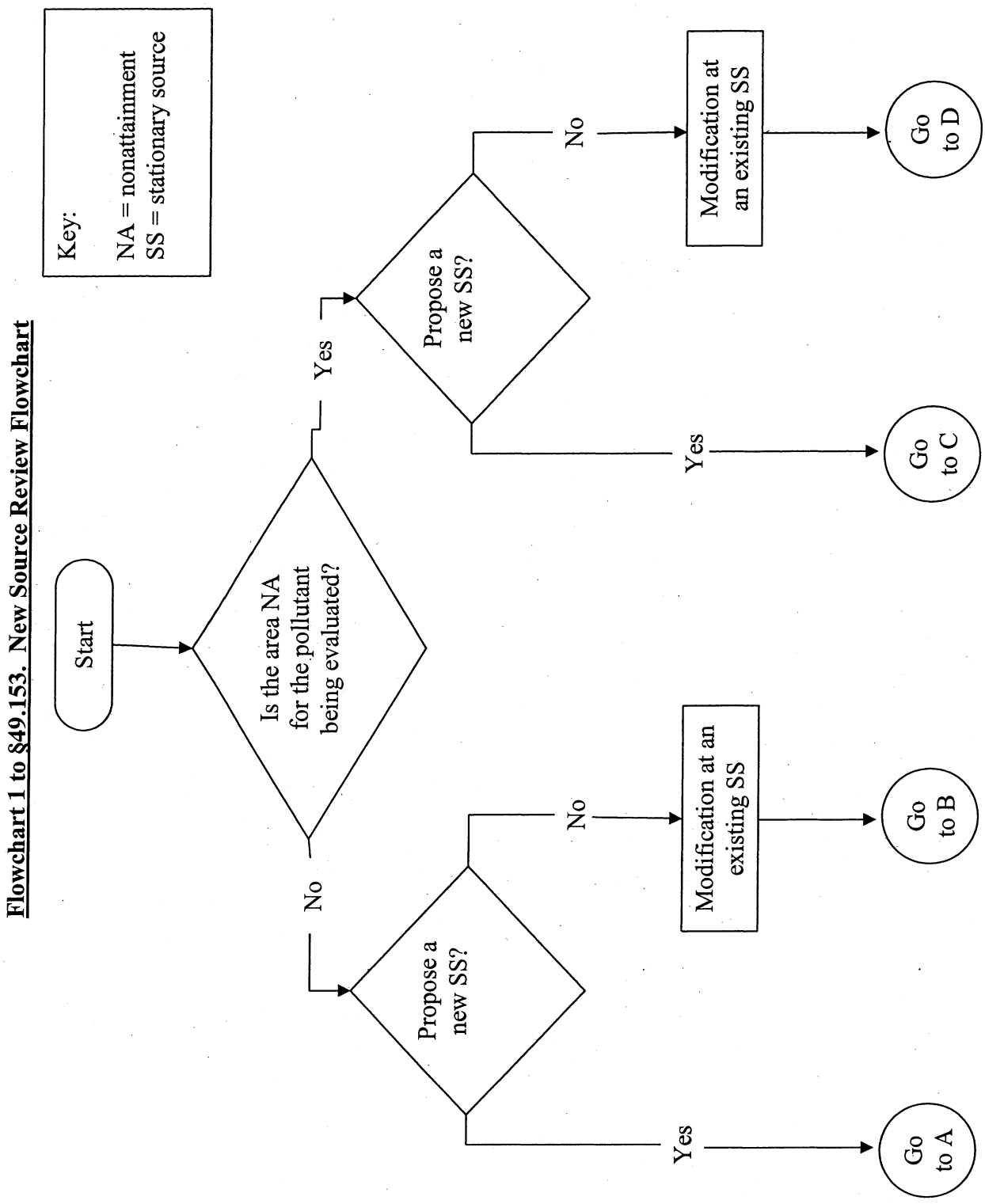
TABLE 1 TO § 49.153. MINOR NSR THRESHOLDS.[1]

Regulated NSR pollutant	Minor NSR thresholds for nonattainment areas (tpy)		Minor NSR thresholds for attainment areas (tpy)
	Extreme ozone areas	Other areas	
Carbon monoxide	5	5	10
Oxides of nitrogen	0	5	10
Sulfur dioxide	5	5	10
VOC	0	2	5
PM	5	5	10
PM–10	1	1	5
PM–2.5	0.6	0.6	3
Lead	0.1	0.1	0.1
Fluorides	NA	NA	1
Sulfuric acid mist	NA	NA	2
Hydrogen sulfide (H_2S)	NA	NA	2
Total reduced sulfur (including H_2S)	NA	NA	2
Reduced sulfur compounds (including H_2S)	NA	NA	2
Municipal waste combustor emissions	NA	NA	2
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	NA	NA	10

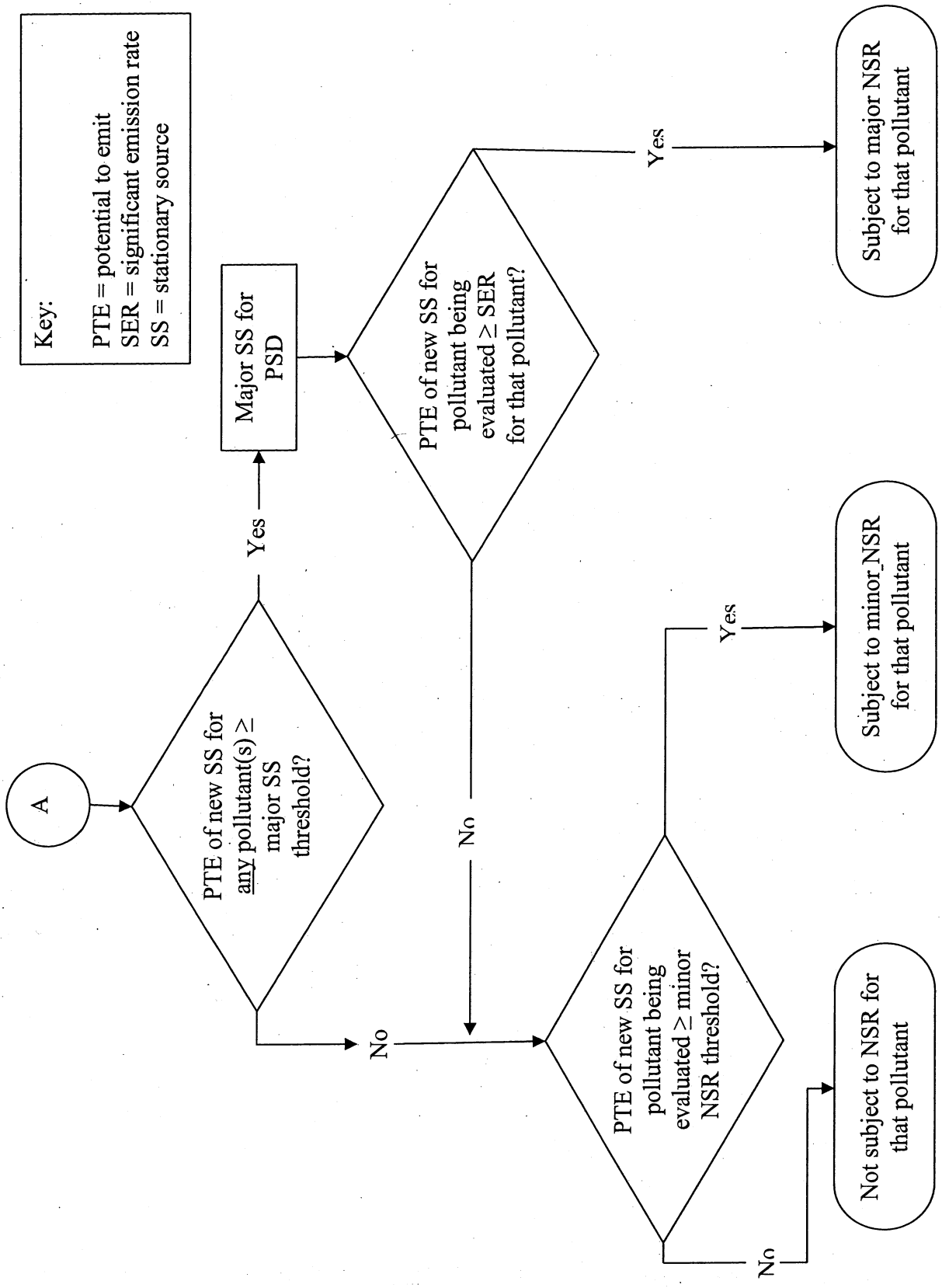
[1] If part of a tribe's area of Indian country is designated as attainment and another part as nonattainment, the applicable threshold for a proposed source or modification is determined based on the designation where the source would be located. If the source straddles the two areas, the more stringent thresholds would apply.

BILLING CODE 6560–50–P

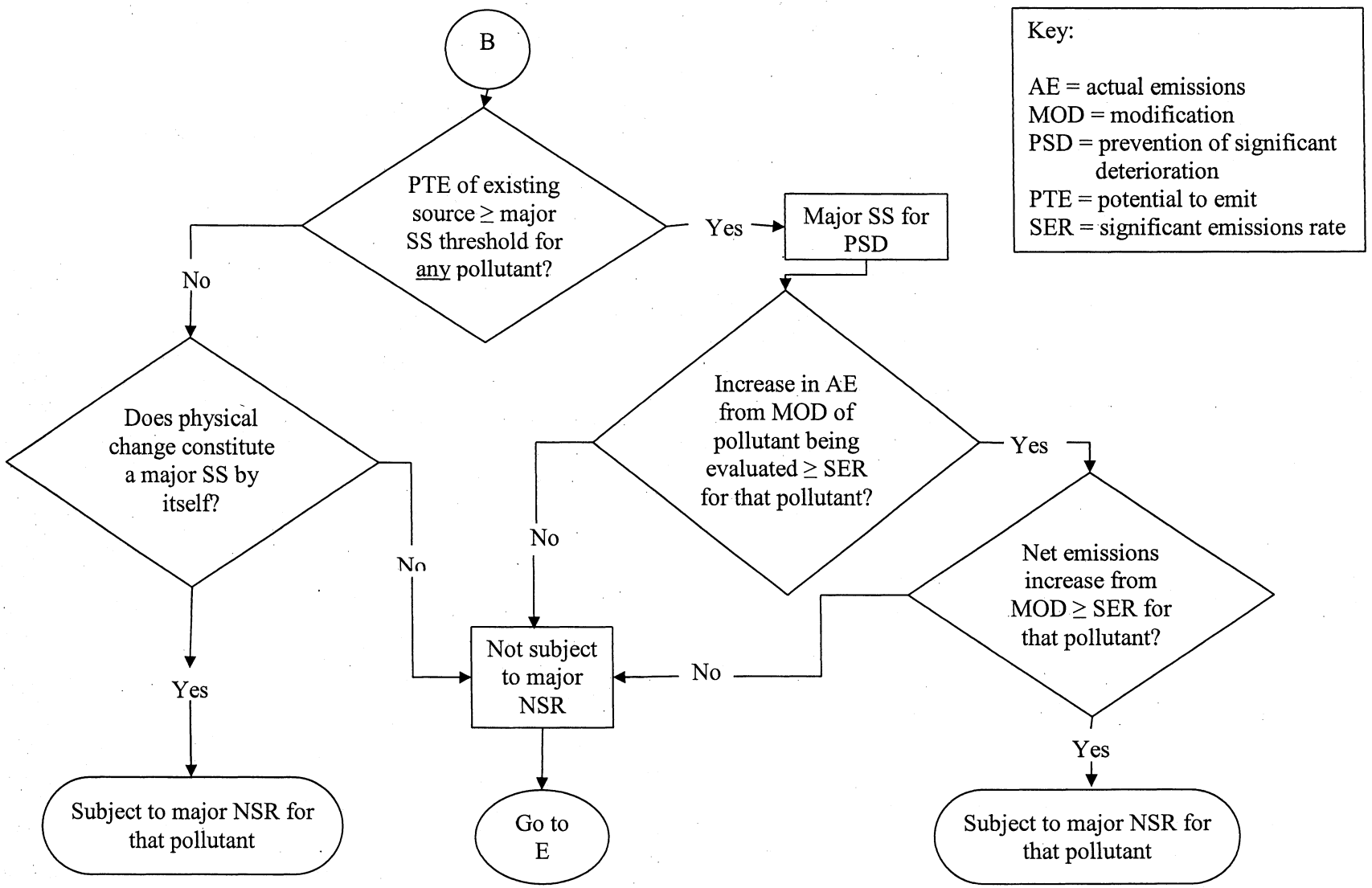
Flowchart 1 to §49.153. New Source Review Flowchart



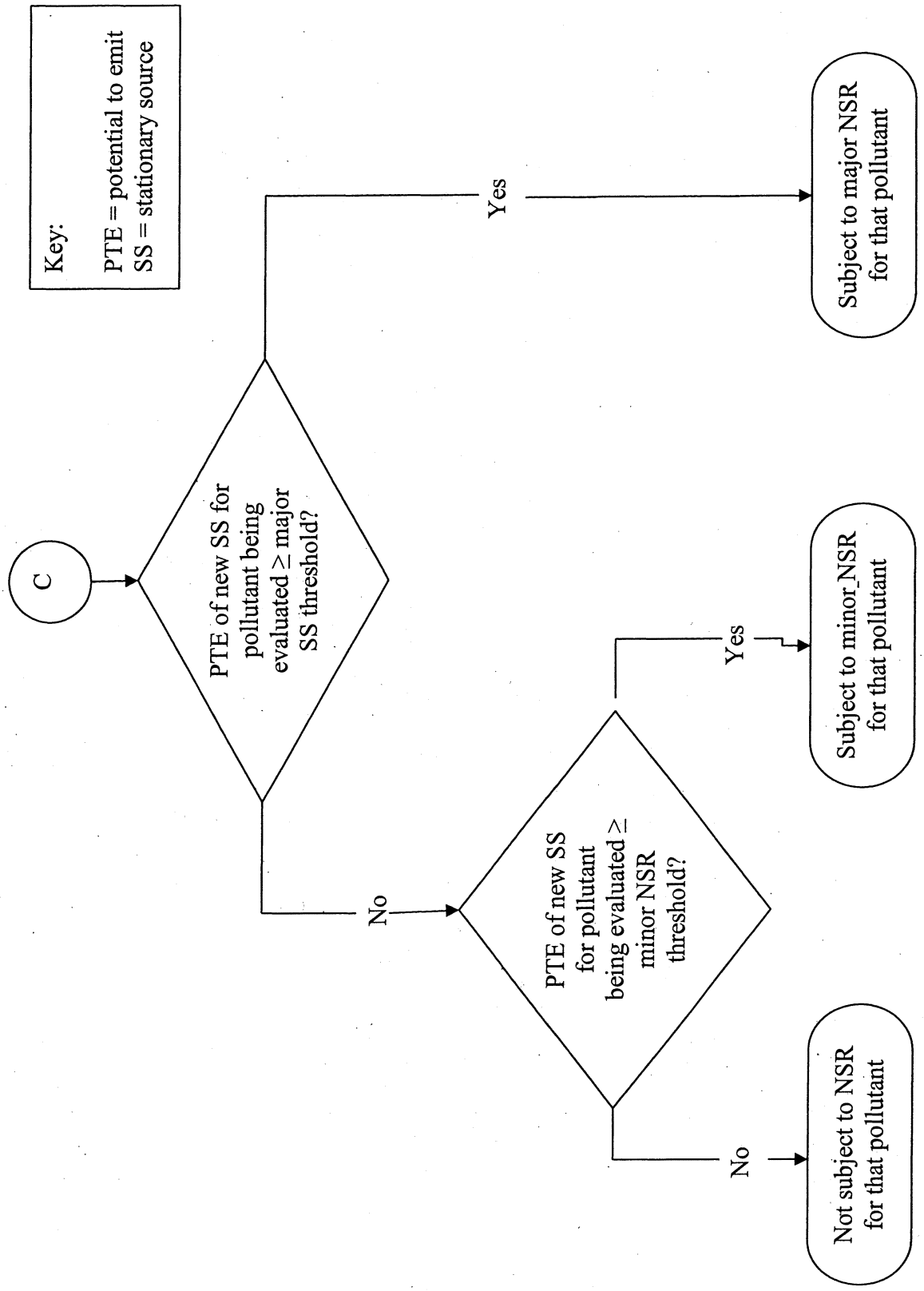
Flowchart 2 to §49.153 New SS in an Attainment or Unclassifiable Area



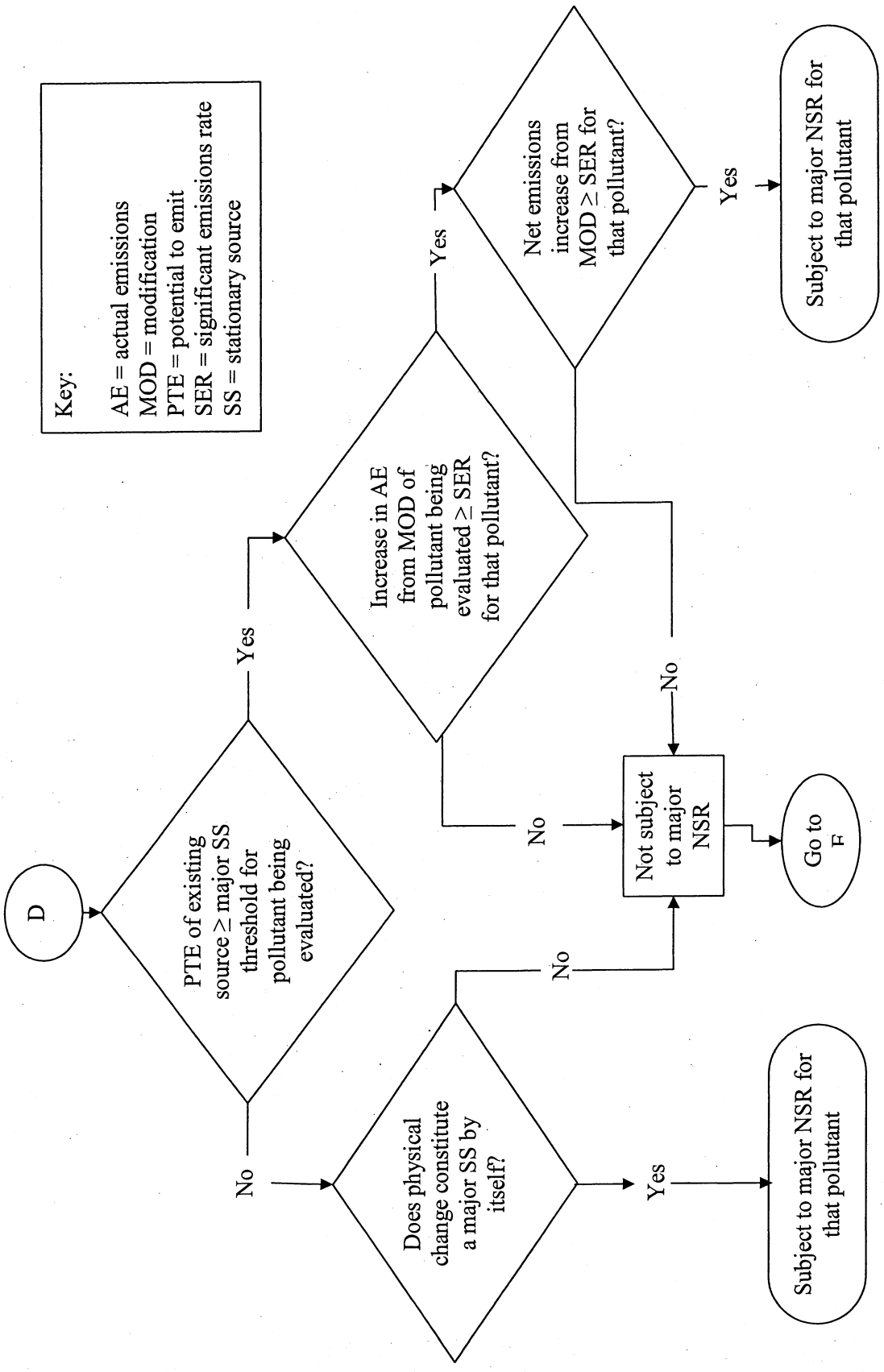
Flowchart 3 to §49.153. Modification at an Existing SS in an Attainment or Unclassifiable Area – Major NSR Applicability



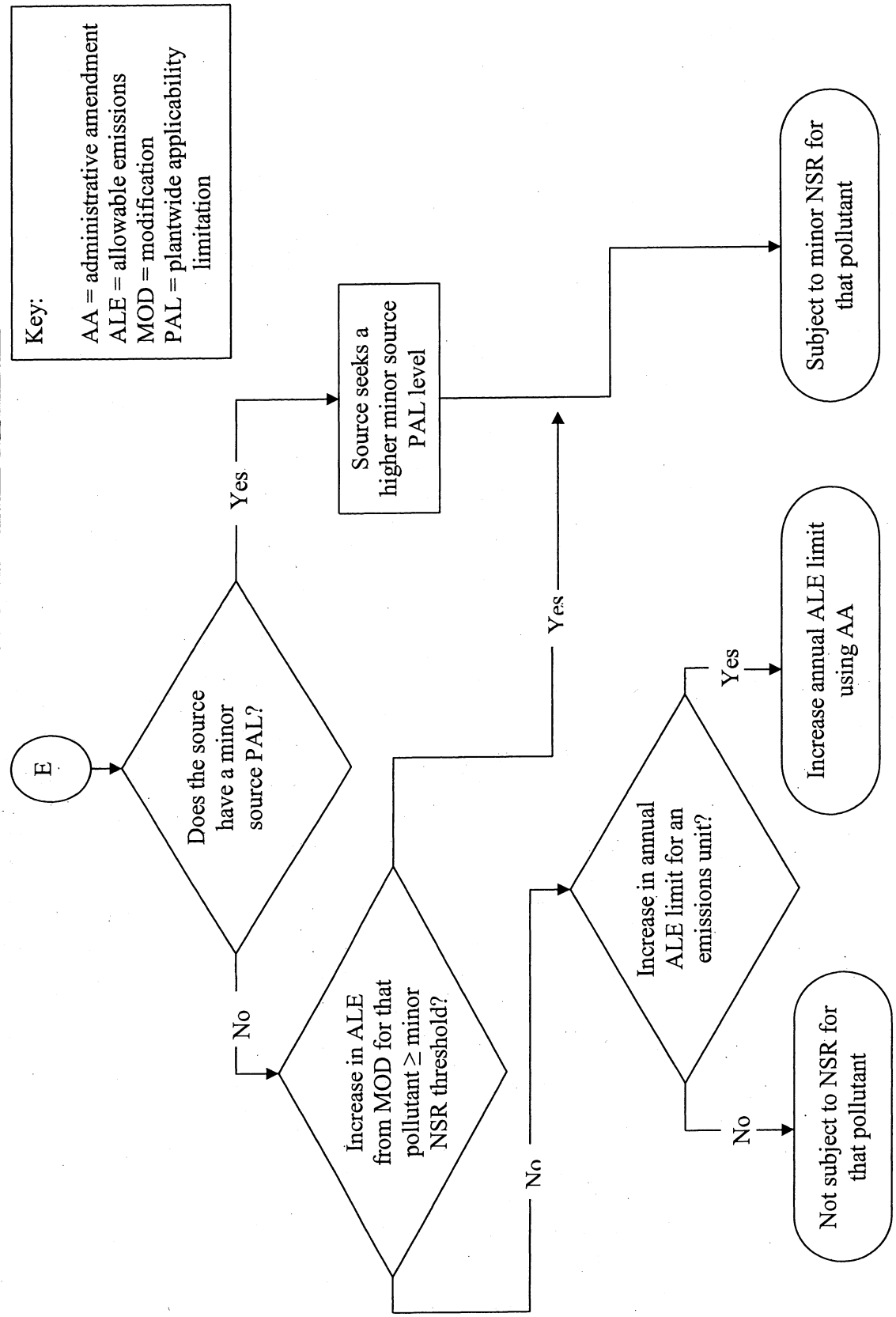
Flowchart 4 to §49.153. New SS in a Nonattainment Area



Flowchart 5 to §49.153. Modification at an Existing SS in a Nonattainment Area – Major NSR Applicability



Flowchart 6 to §49.153. Modification at an Existing SS – Minor NSR Applicability



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§ 49.154 Permit application requirements.

This section applies to you if you are subject to this program under § 49.153(a)(1) for the construction of new minor sources or modifications at existing sources. (As an alternative, you may apply for a general permit under § 49.156 if an applicable general permit is available for your source type.) In addition, this section applies to you if you wish to establish a minor source PAL for your existing minor source (*See* § 49.153(a)(4)). *See* § 49.158(a) for synthetic minor permit application requirements.

(a) *What information must my permit application contain?* Paragraphs (a)(1) through (3) of this section govern the content of your application.

(1) *General provisions for permit applications.* The following provisions apply to permit applications under this program:

(i) The reviewing authority may develop permit application forms for your use.

(ii) The permit application need not contain information on the exempt emissions units and activities listed in § 49.153(c).

(iii) The permit application for a modification need only include information on the affected emissions units as defined in § 49.152(d).

(2) *Required permit application content.* Except as specified in paragraphs (a)(1)(ii) and (iii) of this section, you must include the information listed in paragraphs (a)(2)(i) through (ix) of this section in your application for a permit under this program. The reviewing authority may require additional information as needed to process the permit application.

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) A description of your source's processes and products.

(iii) A list of all affected emissions units (with the exception of the exempt emissions units and activities listed in § 49.153(c)).

(iv) For each new emissions unit that is listed, the potential to emit of each regulated NSR pollutant in tpy (including fugitive emissions, to the extent that they are quantifiable), with supporting documentation. In your calculation of the potential to emit for an emissions unit, you must account for any proposed emission limitations.

(v) For each modified emissions unit and replacement unit that is listed, the allowable emissions of each regulated NSR pollutant in tpy both before and after the modification (including fugitive emissions, to the extent that they are quantifiable), with supporting documentation. For emissions units that do not have an allowable emissions limit prior to the modification, report the potential to emit. In your calculation of annual allowable emissions for an emissions unit after the modification, you must account for any proposed emission limitations.

(vi) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(vii) Identification and description of any existing air pollution control equipment and compliance monitoring devices or activities.

(viii) Any existing limitations on source operation affecting emissions or any work practice standards, where applicable, for all NSR regulated pollutants at the source.

(ix) For each emission point associated with an affected emissions unit, provide stack or vent dimensions and flow information.

(3) *Optional permit application content.* At your option, you may propose the following:

(i) Emission limitations for each affected emissions unit, which may include pollution prevention techniques, air pollution control devices, design standards, equipment standards, work practices, operational standards, or a combination thereof. You may include an explanation of why you believe the proposed emission limitations to be appropriate.

(ii) A minor source PAL, which is a source-wide annual allowable emissions limit, for one or more of the regulated NSR pollutants emitted by your source.

(b) *How is my permit application determined to be complete?* Paragraphs (b)(1) through (3) of this section govern the completeness review of your permit application.

(1) An application for a permit under this program will be reviewed by the reviewing authority within 45 days of its receipt to determine whether the application contains all the information necessary for processing the application. You should contact the reviewing authority to find out the date of receipt of the application.

(2) If the reviewing authority determines that the application is not complete, it will request additional information from you as necessary to process the application. If the reviewing authority determines that the application is complete, it may notify you in writing. If you do not receive a request for additional information or a notice of complete application from the reviewing authority within 50 days of its receipt of your application, your application will be deemed complete.

(3) If, while processing an application that has been determined to be complete, the reviewing authority determines that additional information is necessary to evaluate or take final action on the application, it may request additional information from you and require your responses within a reasonable time period.

(c) *How will the reviewing authority determine the emission limitations that will be required in my permit?* After determining that your application is complete, the reviewing authority will conduct a case-by-case control technology review to determine the appropriate level of control, if any, necessary to assure that NAAQS are achieved, as well as the corresponding emission limitations for the affected emissions units at your source.

(1) In carrying out this case-by-case review, the reviewing authority will consider the following factors:

(i) Local air quality conditions.

(ii) Typical control technology or other emissions reduction measures used by similar sources in surrounding areas.

(iii) Anticipated economic growth in the area.

(iv) Cost-effective emission reduction alternatives.

(2) The reviewing authority must require an emission limit (*i.e.*, a limit on the quantity, rate, or concentration of emissions) for each affected emissions unit at your source for which such a limit is technically and economically feasible.

(3) The emission limitations required by the reviewing authority may consist of emission limits, pollution prevention techniques, design standards, equipment standards, work practice standards, operational standards, or any combination thereof.

(4) The emission limitations required by the reviewing authority must assure that each affected emissions unit will comply with all requirements of parts 60, 61, and 63 of this chapter that apply to the unit.

(5) The emission limitations required by the reviewing authority must not be affected in any manner by so much of a stack's height as exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b) of this chapter. If the reviewing authority proposes to issue a permit to a source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii)(1) or (2) of this chapter, it

must notify the public of the availability of the demonstration study and must provide opportunity for a public hearing according to the requirements of § 49.157 for the draft permit.

(d) *When may the reviewing authority require an air quality impacts analysis (AQIA)?* Paragraphs (d)(1) through (3) of this section govern AQIA requirements under this program.

(1) In those rare instances where the reviewing authority has reason to be concerned that the construction of your minor source or modification would cause or contribute to a NAAQS or PSD increment violation, it may require you to conduct and submit an AQIA.

(2) If required, you must conduct the AQIA using the dispersion models and procedures of part 51, Appendix W of this chapter.

(3) If the AQIA reveals that construction of your source or modification would cause or contribute to a NAAQS or PSD increment violation, the reviewing authority must require you to reduce such impacts before it can issue you a permit.

§ 49.155 Permit requirements.

This section applies to your permit if you are subject to this program under § 49.153(a)(1) for construction of new minor sources or modifications at existing sources, unless you applied for a general permit under § 49.156 (where an applicable general permit is available for your source type). In addition, this section applies to your permit if you wish to establish a minor source PAL for your existing minor source (*See* § 49.153(a)(4))

(a) *What information must my permit include?* Your permit must include the requirements in paragraphs (a)(1) through (7) of this section.

(1) *General requirements.* The following elements must be included in your permit:

(i) The effective date of the permit and the date by which you must commence construction in order for your permit to remain valid (*i.e.*, 18 months after the permit effective date).

(ii) The emissions units subject to the permit and their associated emission limitations.

(iii) Monitoring, recordkeeping, reporting, and testing requirements to assure compliance with the emission limitations.

(2) *Emission limitations.* The permit must include the emission limitations determined by the reviewing authority under § 49.154(c) for each affected emissions unit. In addition, the permit must address limits on annual allowable emissions as set out in paragraphs (a)(2)(i) and (ii) of this section.

(i) *New minor sources.* For new minor sources, limits on annual allowable emissions in tpy must be included in the permit as follows:

(A) The reviewing authority may include minor source PALs for one or more regulated NSR pollutants, if you requested such PALs.

(B) Otherwise, the reviewing authority must include an annual allowable emissions limit for each affected emissions unit, for each regulated NSR pollutant emitted by the unit that is not subject to a minor source PAL.

(ii) *Existing minor sources.* For existing minor sources, limits on annual allowable emissions in tpy must be included in the permit as follows:

(A) The reviewing authority may include minor source PALs for one or more regulated NSR pollutants, if you requested such PALs.

(B) For a modification, the reviewing authority must include an annual allowable emissions limit for each affected emissions unit, for each regulated NSR pollutant emitted by the unit that is not subject to a minor source PAL.

(C) If you apply for a minor source PAL for one or more regulated NSR pollutants for your existing source at a time when you are not also proposing a modification, no annual allowable emissions limits are required for the regulated NSR pollutants that are not subject to a PAL.

(3) *Monitoring requirements.* The permit must include monitoring requirements sufficient to assure compliance with the emission limitations that apply to the affected emissions units at your source. The reviewing authority may require, as appropriate, any of the requirements in paragraphs (a)(3)(i) through (iii) of this section.

(i) Any emissions monitoring, including analysis procedures, test methods, periodic testing, instrumental monitoring, and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods, and other statistical conventions consistent with the required emission limitations.

(ii) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(iii) If the permit includes a minor source PAL for a pollutant at your minor source, monitoring to determine the actual emissions from your source for each month and the total actual emissions for each 12-month period, rolled monthly, for that pollutant.

(4) *Recordkeeping requirements.* The permit must include recordkeeping requirements sufficient to assure compliance with the emission limitations and monitoring requirements, and must require the elements in paragraphs (a)(4)(i) and (ii) of this section.

(i) Records of required monitoring information that include the information in paragraphs (a)(4)(i)(A) through (F) of this section, as appropriate.

(A) The location, date, and time of sampling or measurements.

(B) The date(s) analyses were performed.

(C) The company or entity that performed the analyses.

(D) The analytical techniques or methods used.

(E) The results of such analyses.

(F) The operating conditions existing at the time of sampling or measurement.

(ii) Retention for 5 years of records of all required monitoring data and support information for the monitoring sample, measurement, report, or application. Support information may include all calibration and maintenance records, all original strip-chart recordings or digital records for continuous monitoring instrumentation, copies of all reports required by the permit, and for sources with a minor source PAL for a pollutant, the actual emissions determined for each month and the total actual emissions for each 12-month period, rolled monthly, for that pollutant.

(5) *Reporting requirements* The permit must include the reporting requirements in paragraphs (a)(5)(i) and (ii) of this section.

(i) Annual submittal of reports of monitoring required under paragraph (a)(3) of this section, including the type and frequency of monitoring, and a summary of results obtained by monitoring.

(ii) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Within the permit, the reviewing authority must define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable emission limitations.

(6) *Severability clause.* The permit must include a severability clause to ensure the continued validity of the other portions of the permit in the event of a challenge to a portion of the permit.

(7) *Additional provisions.* The permit must also contain provisions stating the requirements in paragraphs (a)(7)(i) through (vii) of this section.

(i) You, as the permittee, must comply with all conditions of your permit, including emission limitations that apply to the affected emissions units at your source. Noncompliance with any permit term or condition is a violation of the permit and may constitute a violation of the Act and is grounds for enforcement action and for a permit termination or revocation.

(ii) Your permitted source must not cause or contribute to a NAAQS violation or, in an attainment area, must not cause or contribute to a PSD increment violation.

(iii) It is not a defense for you, as the permittee, in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iv) The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by you, as the permittee, for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(v) The permit does not convey any property rights of any sort or any exclusive privilege.

(vi) You, as the permittee, shall furnish to the reviewing authority, within a reasonable time, any information that the reviewing authority may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with part 2, subpart B of this chapter.

(vii) Inspection and entry provisions requiring that upon presentation of proper credentials, you, as the permittee, must allow a representative of the reviewing authority to:

(A) Enter upon your premises where a source is located or emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;

(B) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(C) Inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(D) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and

(E) Record any inspection by use of written, electronic, magnetic and photographic media.

(b) *Can my permit become invalid?* Your permit becomes invalid if you do not commence construction within 18 months after the effective date of your permit, if you discontinue construction for a period of 18 months or more, or if you do not complete construction within a reasonable time. The reviewing authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; you must commence construction of each such phase within 18 months of the projected and approved commencement date.

§ 49.156 General permits.

This section applies to general permits for the purposes of complying with the preconstruction permitting requirements for sources of regulated NSR pollutants under this program.

(a) *What is a general permit?* A general permit is a preconstruction permit issued by a reviewing authority that may be applied to a number of similar emissions units or sources. The purpose of a general permit is to simplify the permit application and issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for case-by-case permit development for such facilities. A general permit may be written to address a single emissions unit, a group of the same type of emissions units, or an entire minor source.

(b) *How will the reviewing authority issue general permits?* The reviewing authority will issue general permits as follows:

(1) A general permit may be issued for a category of emissions units or sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, and recordkeeping. ''Similar in nature'' refers to size, processes, and operating conditions.

(2) A general permit must be issued according to the requirements for public participation in § 49.157 and the requirements for final permit issuance and administrative and judicial review in § 49.159.

(3) Issuance of a general permit is considered final agency action with respect to all aspects of the general permit except its applicability to an individual source. The sole issue that may be appealed after an individual source is approved to construct under a general permit (*See* paragraph (e) of this section) is the applicability of the general permit to that particular source.

(c) *For what categories will general permits be issued?* (1) The reviewing authority will determine which categories of individual emissions units, groups of similar emissions units, or sources are appropriate for general permits in its area.

(2) General permits will be issued at the discretion of the reviewing authority. However, the following are some common categories of emissions units or sources for which general permits may be developed:

(i) Autobody repair shops.

(ii) Concrete batching plants.

(iii) Dry cleaners.

(iv) Gas stations.

(v) Gas distribution facilities.

(vi) General purpose internal combustion engines.

(vii) Hot mix asphalt facilities.

(viii) Heating units.

(ix) Nonmetallic mineral processing plants.

(x) Rock crushing facilities.

(xi) Surface coating operations.

(xii) Solvent cleaning operations.

(xiii) Graphic arts operations.

(xiv) Grain elevators.

(xv) Tank batteries in oil and gas production operations that are not part of a larger source.

(xvi) Small to medium compressor stations.

(xvii) Small to medium transmission stations.

(xviii) Dehydrators that are not a part of a larger source.

(xix) Compressor engines.

(d) *What should the general permit contain?* The general permit must contain the permit elements listed in § 49.155(a). In addition, the general permit must contain the information listed in paragraphs (d)(1) and (2) of this section. The reviewing authority may specify additional general permit terms and conditions.

(1) Identification of the specific category of emissions units or sources to which the general permit applies, including any criteria that your emissions units or source must meet to be eligible for coverage under the general permit.

(2) Information required to apply for coverage under a general permit including, but not limited to, the following:

(i) The name and mailing address of the reviewing authority to whom you must submit your application.

(ii) The procedure to obtain any standard application forms that the reviewing authority may have developed.

(iii) The information that you must provide to the reviewing authority in your application to demonstrate that you are eligible for coverage under the general permit.

(iv) Other application requirements deemed necessary by the reviewing authority.

(e) *How is my source issued a general permit?* (1) If your source qualifies for a general permit, you may apply to the reviewing authority for coverage under the general permit.

(2) The reviewing authority must act on your application for coverage under the general permit as expeditiously as possible, but it must notify you of the final decision within 90 days.

(3) Without repeating the public participation procedures required in § 49.157, the reviewing authority may grant or deny your request for approval to construct under a general permit. The reviewing authority must send you a letter approving or disapproving the request to construct under a general permit. Such a letter is a final permit action for purposes of judicial review (*See* § 49.159) only for the issue of whether your source qualifies for the general permit. You must post a prominent notice at your source of the letter of approval to construct under the general permit.

(4) If the reviewing authority has sent a letter approving the general permit for your source, you must comply with all conditions and terms of the general permit. You will be subject to enforcement action for failure to obtain a preconstruction permit if you construct the emissions unit(s) or source with general permit approval and your source is later determined not to qualify for the conditions and terms of the general permit.

(5) Any source covered under a letter approving the general permit may request to be excluded from the general permit by applying for a permit under § 49.154.

§ 49.157 Public participation requirements.

This section applies to the issuance of preconstruction permits, synthetic minor permits, and the initial issuance of general permits. It does not apply to decisions regarding whether a specific source is eligible for coverage under a general permit.

(a) *What permit information will be publicly available?* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the reviewing authority must make available for public inspection the documents listed in paragraphs (a)(1) through (5) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the tribal environmental office or a local library.

(1) All information submitted as part of an application for a permit.

(2) Any additional information requested by the reviewing authority.

(3) The reviewing authority's analysis of the application and any additional information submitted by the source, including (for preconstruction and general permits) the control technology review.

(4) For preconstruction and general permits, the reviewing authority's analysis of the effect of the construction of the minor source or modification on ambient air quality.

(5) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(b) *How will the public be notified and participate?* (1) Before issuing a permit under this program, the reviewing authority must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (b)(1)(i) and (ii) of this section The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The reviewing authority must mail a copy of the notice to you, the appropriate Indian governing body, and the tribal, State, and local air pollution authorities having jurisdiction in areas outside of the area of Indian country potentially impacted by the air pollution source.

(ii) Depending on such factors as the nature and size of your source, local air quality considerations, and the characteristics of the population in the affected area, the reviewing authority must use appropriate means of notification, such as those listed in paragraphs (b)(1)(ii)(A) through (E) of this section.

(A) The reviewing authority may mail or e-mail a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(B) The reviewing authority may post the notice on its Web site.

(C) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a tribal newspaper or newsletter.

(D) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, tribal environmental offices, community centers, or other gathering places in the community.

(E) The reviewing authority may employ other means of notification as appropriate.

(2) The notice required pursuant to paragraph (b)(1) of this section must include the following information at a minimum:

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) The name and address of the reviewing authority processing the permit action;

(iii) For preconstruction permits (including general permits), the regulated NSR pollutants to be emitted, the affected emissions units, and the emission limitations for each affected emissions unit;

(iv) For preconstruction permits, the emissions change involved in the permit action;

(v) For synthetic minor permits, a description of the proposed limitation and its effect on the potential to emit of the source;

(vi) Instructions for requesting a public hearing;

(vii) The name, address, and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(viii) Locations and times of availability of the information (listed in paragraph (a) of this section) for public inspection; and

(ix) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments, and for requests for a public hearing.

(c) *How will the public comment, and will there be a public hearing?* (1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue

with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.

(2) The reviewing authority must extend the public comment period under paragraph (b) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(4) The reviewing authority must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(5) The reviewing authority must make a tape recording or written transcript of any hearing available to the public.

§ 49.158 Synthetic minor permits.

You may obtain a synthetic minor permit under this program to establish a synthetic minor source and/or a synthetic minor HAP source. Note that if you propose to construct or modify a synthetic minor source, you are also subject to the preconstruction permitting requirements in §§ 49.154 and 49.155.

(a) *What information must my synthetic minor permit application contain?* (1) Your application must include the following information:

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) For each regulated NSR pollutant and/or HAP and for all emissions units to be covered by an emissions limitation, the following information:

(A) The proposed emission limitation and a description of its effect on actual emissions or the potential to emit. Proposed emission limitations must have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes.

(D) Identification of the emissions units.

(E) Type and quantity of fuels and/or raw materials used.

(F) Description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit, including all calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation, including all calculations for the estimates.

(iii) Any other information specifically requested by the reviewing authority.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the reviewing authority. Any emission estimates submitted to the reviewing authority must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the reviewing authority.

(b) *What are the procedures for obtaining a synthetic minor permit?* (1) If you wish to obtain a synthetic minor permit under this program, you must submit a permit application to the reviewing authority. The application must contain the information specified in paragraph (a) of this section. If the reviewing authority has developed application forms for such permits, you must use those forms.

(2) Within 60 days after receipt of an application, the reviewing authority will determine if it contains the information specified in paragraph (a) of this section and, if so, will determine it complete for the purpose of preparing a draft synthetic minor permit. You should contact the reviewing authority to find out the date of receipt of the application.

(3) If the reviewing authority determines that the application is not complete, it will request additional information from you as necessary to process the application. If the reviewing authority determines that the application is complete, it may notify you in writing. If you do not receive a request for additional information or a notice of complete application from the reviewing authority within 65 days of its receipt of your application, your application will be deemed complete.

(4) The reviewing authority will prepare a draft synthetic minor permit that describes the proposed limitation and its effect on the potential to emit of the source.

(5) The reviewing authority must provide an opportunity for public participation and public comment on the draft synthetic minor permit as set out in § 49.157.

(6) After the close of the public comment period, the reviewing authority will review all comments received and prepare a final synthetic minor permit.

(7) The final synthetic minor permit will be issued and will be subject to administrative and judicial review as set out in § 49.159.

(c) *What are my responsibilities under this program for my existing synthetic minor source or synthetic minor HAP source?* If you have an existing synthetic minor source or synthetic minor HAP source, you are subject to either paragraph (c)(1) or paragraph (c)(2) of this section, as follows:

(1) If your synthetic minor status is established through a permit or other document that is enforceable as a practical matter, you do not need to do anything. You may use the mechanism established in this program according to the requirements of paragraphs (a) and (b) of this section to replace your existing synthetic minor permit when it expires.

(2) If you have achieved your existing synthetic minor status by maintaining your actual emissions at less than 50 percent of the relevant major source threshold, you must obtain a synthetic minor permit under this program according to the requirements of paragraphs (a) and (b) of this section. The following provisions apply:

(i) You must apply for a synthetic minor permit by [1 year and 60 days after publication of final rule], and you must respond in a timely manner to any requests from the reviewing authority for additional information.

(ii) Provided that you submit your application and any requested additional information as indicated in paragraph (c)(2)(i) of this section, your source will continue to be considered a synthetic minor source or synthetic minor HAP source (as applicable) until your synthetic minor permit under this program has been issued.

(iii) Should you fail to submit your application and any requested additional information as indicated in paragraph (c)(2)(i) of this section, your source will no longer be considered a synthetic minor source or synthetic minor HAP source (as applicable), and will immediately become subject to all requirements for major sources.

§ 49.159 Final permit issuance and administrative and judicial review.

(a) *How will final action occur, and when will my permit become effective?* After decision on a permit, the reviewing authority must notify you of the decision, in writing, and if the permit is denied, of the reasons for such denial. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at all of the locations where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, general public, and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after permit issuance, unless:

(1) A later effective date is specified in the permit; or

(2) Review of the final permit is requested under paragraph (d) of this section (in which case the specific terms and conditions of the permit that may be the subject of the request for review must be stayed); or

(3) The reviewing authority may make the permit effective immediately upon issuance if no comments requested a change in the draft permit or a denial of the permit.

(b) *For how long will the reviewing authority retain my permit-related records?* The records, including any required applications for each draft and final permit or application for permit revision, must be kept by the reviewing authority for not less than 5 years.

(c) *What is the administrative record for each final permit?* (1) The reviewing authority must base final permit decisions on an administrative record consisting of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application;

(iii) Other documents in the supporting files for the draft permit that were relied upon in the decisionmaking;

(iv) All comments received during the public comment period, including any extension or reopening;

(v) The tape or transcript of any hearing(s) held;

(vi) Any written material submitted at such a hearing;

(vii) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(viii) The final permit; and

(ix) Other documents in the supporting files for the final permit that were relied upon in the decisionmaking.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the that file.

(d) *Can permit decisions be appealed?* Permit decisions may be appealed according to the following provisions:

(1) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program, including informal appeals of denials of requests for modification, revocation and re-issuance, or termination of permits under paragraph (e)(2) of this section. An appeal directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(2) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Board to review any condition of the permit decision. Any person who failed to file comments and failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins when the reviewing authority has fulfilled the notice requirements for the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues identified were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law that is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

(4) The Board may also decide on its own initiative to review any condition of any permit issued under this program.

(5) Within a reasonable time following the filing of the petition for review, the Board must issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. If the Board grants review in response to requests under paragraph (d)(2) or (4) of this section, public notice must be given as provided in §49.157(b). Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Board denies review, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each.

(6) A petition to the Board under paragraph (d)(2) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(7) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the reviewing authority and agency review procedures are exhausted. A final

permit decision must be issued by the reviewing authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(8) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration, except in cases in which the Board has deferred to the Administrator and the Administrator has issued the final order. A motion for reconsideration must not stay the effective date of the final order unless specifically so ordered by the Board.

(9) For purposes of this section, time periods are computed as follows:

(i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

(e) *Can my permit be reopened?* Your permit can be reopened according to the following procedures:

(1) Any person (including the permittee) may petition the reviewing authority to reopen a permit for cause, and the reviewing authority may commence a permit reopening on its own initiative. The reviewing authority may not reopen a permit for cause unless it contains a material mistake or fails to assure compliance with applicable requirements. All requests must be in writing and must contain reasons supporting the request.

(2) If the reviewing authority decides the request is not justified, the reviewing authority must send the requestor a brief written response giving a reason for the decision. Denials of requests for revision, revocation and re-issuance, or termination are not subject to public notice, comment, or hearings. Denials by the reviewing authority may be informally appealed to the Board by a letter briefly setting forth the relevant facts. The Board may direct the reviewing authority to begin revision, revocation and re-issuance, or termination proceedings under paragraph (e)(3) of this section. The appeal must be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and re-issuance, or termination.

(3) If the reviewing authority decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, it shall initiate proceedings to reopen the permit.

(f) *What is an administrative permit revision?* The following provisions govern administrative permit revisions.

(1) An administrative permit revision is a permit revision that makes any of the following changes:

(i) Corrects typographical errors.

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source.

(iii) Requires more frequent monitoring or reporting by the permittee.

(iv) Allows for a change in ownership or operational control of a source where the reviewing authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the reviewing authority.

(v) Establishes an increase in an emissions unit's annual allowable emissions limit for a regulated NSR pollutant, when the action that necessitates such increase is not otherwise subject to review under major NSR or under this program.

(vi) Incorporates any other type of change that the reviewing authority has determined to be similar to those in paragraphs (f)(1)(i) through (v) of this section.

(2) An administrative permit revision is not subject to the permit application, issuance, public participation, or administrative and judicial review requirements of this program.

§ 49.160 Administration and delegation of the minor NSR program in Indian country.

(a) *Who administers a minor NSR program in Indian country?* (1) If the Administrator has approved a TIP that includes a minor NSR program for sources in Indian country that meets the requirements of section 110(a)(2)(C) of the Act and §§51.160 through 51.164 of this chapter, the tribe is the reviewing authority and will administer the approved minor NSR program under tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal minor NSR program implemented under Federal authority to a tribal agency upon request, in accordance with the provisions of paragraph (b) of this section. If the tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section.

(3) If the Administrator has not approved an implementation plan or granted delegation to a tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal minor NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal minor NSR program to tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal minor NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section. Any Federal requirements under this program that are administered by the delegate tribal agency will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation of the Federal minor NSR program and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.

(1) *Information to be included in the Administrative Delegation Request.* In order to be delegated authority to assist EPA with administration of this FIP permit program for sources, the tribal agency must submit a request to the Administrator that:

(i) Identifies the specific provisions for which delegation is requested;

(ii) Identifies the Indian Reservation or other areas of Indian country for which delegation is requested;

(iii) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(A) A statement that the applicant is a tribe recognized by the Secretary of the Interior;

(B) A descriptive statement that is consistent with the type of information described in § 49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area; and

(C) A description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested; and

(iv) Demonstrates that the tribal agency has the technical capability and adequate resources to administer the FIP provisions for which the delegation is requested.

(2) *Delegation of Partial Administrative Authority Agreement.* A Delegation of Partial Administrative Authority Agreement (Agreement) will set forth the terms and conditions of the delegation, will specify the provisions that the delegate tribal agency will be authorized to implement on behalf of EPA, and will be entered into by the Administrator and the delegate tribal agency. The Agreement will become effective upon the date that both the Administrator and the delegate tribal agency have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the delegate tribal agency will be responsible, to the extent specified in the Agreement, for assisting EPA with administration of the provisions of the Federal minor NSR program that are subject to the Agreement.

(3) *Publication of notice of the Agreement.* The Administrator will publish a notice in the **Federal Register** informing the public of any Agreement for a particular area of Indian country. The Administrator also will publish the notice in a newspaper of general circulation in the area affected by the delegation. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(4) *Revision or revocation of an Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate tribal agency.

(5) *Transmission of information to the Administrator.* When administration of a portion of the Federal minor NSR program in Indian country that includes receipt of permit application materials and preparation of draft permits has been delegated in accordance with the provisions of this section, the delegate tribal agency must provide to the Administrator a copy of each permit application (including any application for permit revision) and each draft permit. The applicant may be required by the delegate tribal agency to provide a copy of the permit application directly to the Administrator. With the Administrator's consent, the delegate tribal agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application, in place of the complete permit application. To the extent practicable, the preceding information should be provided in electronic format as requested by the Administrator.

(6) *Waiver of information transmission requirements.* The Administrator may waive the requirements of paragraph (b)(5) of this section for any category of sources (including any class, type, or size within such category) by transmitting the waiver in writing to the delegate tribal agency.

(7) *Retention of records.* Where a delegate tribal agency prepares draft or final permits or receives applications for permit revisions on behalf of EPA, the records for each draft and final permit or application for permit revision must be kept by the delegate tribal agency for a period not less than 5 years. The delegate tribal agency must also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate tribal agency is implementing and administering the delegated program in compliance with the requirements of the Act and of this program.

(8) *Delegation of signature authority.* To receive delegation of signature authority, the legal statement submitted by the tribal agency pursuant to paragraph (b)(1) of this section must certify that no applicable provision of tribal law requires that a minor NSR permit be issued after a certain time if the delegate tribal agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit).

(c) *Are there any non-delegable elements of the Federal minor NSR program in Indian country?* The following authorities cannot be delegated outside of EPA:

(1) The Administrator's authority to object to the issuance of a minor NSR permit.

(2) The Administrator's authority to enforce, revoke, or terminate permits issued pursuant to this program.

(d) *How will EPA transition its authority to an approved minor NSR program?* (1) The Administrator will suspend the issuance of minor NSR permits under this program promptly upon publication of notice of approval of an implementation plan with a minor NSR permit program for that area.

(2) The Administrator may retain jurisdiction over the permits for which the administrative or judicial review process is not complete and will address this issue in the notice of program approval.

(3) After approval of a program for issuing minor NSR permits and the suspension of issuance of minor NSR permits by the Administrator, the Administrator will continue to administer minor NSR permits until permits are issued under the approved implementation plan program.

§§ 49.161–49.165 [Reserved]

3. Subpart C of Part 49 is amended by adding an undesignated center heading and §§ 49.166 through 49.173, and adding and reserving §§ 49.174 and 49.175 to read as follows:

Federal Major New Source Review Program for Nonattainment Areas in Indian Country

§ 49.166 Program overview.

(a) *What constitutes the Federal major new source review (NSR) program for nonattainment areas in Indian country?* As set forth in this Federal Implementation Plan (FIP), the Federal major NSR program for nonattainment areas in Indian country (or ''program'') consists of §§ 49.166 through 49.175.

(b) *What is the purpose of this program?* This program has the following purposes:

(1) It establishes a preconstruction permitting program for new major stationary sources and major modifications at existing major stationary sources located in nonattainment areas in Indian country to meet the requirements of part D of title I of the Act.

(2) It requires that major stationary sources subject to this program comply with the provisions and requirements of part 51, appendix S of this chapter (appendix S). Additionally, it sets forth the criteria and procedures in appendix S that the reviewing authority (as defined in § 49.167) will use to approve permits under this program. Note that for the purposes of this program, the

term ''SIP'' as used in appendix S means any EPA-approved implementation plan, including a Tribal Implementation Plan (TIP). While some of the important provisions of appendix S are paraphrased in various paragraphs of this program to highlight them, the provisions of appendix S govern.

(3) It also sets forth procedures for appealing a permit issued under this program as provided in § 49.172.

(c) *When and where does this program apply?* (1) The provisions of this program apply to new major stationary sources and major modifications at existing major stationary sources located in nonattainment areas in Indian country where there is no EPA-approved nonattainment major NSR program beginning on [date 60 days from date of publication of final rule]. The provisions of this program apply only to stationary sources and modifications that are major for the regulated NSR pollutant(s) for which the area is designated nonattainment.

(2) The provisions of this program cease to apply in an area covered by an EPA-approved implementation plan on the date that our approval of that plan becomes effective, provided that the plan includes provisions that comply with the requirements of part D of title I of the Act and § 51.165 of this chapter for the construction of new major stationary sources and major modifications at existing major stationary sources in nonattainment areas.

(d) *What general provisions apply under this program?* The following general provisions apply to you as an owner/operator of a stationary source:

(1) If you propose to construct a new major stationary source or a major modification at an existing major stationary source in a nonattainment area in Indian country, you must obtain a major NSR permit under this program before beginning actual construction. If you commence construction after the effective date of this program without applying for and receiving a permit pursuant to this program, you will be subject to appropriate enforcement action.

(2) If you do not construct or operate your source or modification in accordance with the terms of your major NSR permit issued under this program, you will be subject to appropriate enforcement action.

(3) Issuance of a permit under this program does not relieve you of the responsibility to comply fully with applicable provisions of any EPA-approved implementation plan or FIP and any other requirements under applicable law.

(4) Nothing in this program prevents a tribe from administering a major NSR permit program with more stringent requirements in an approved TIP.

§ 49.167 Definitions.

For the purposes of this program, the definitions in paragraph II.A of appendix S to part 51 of this chapter apply, unless otherwise stated. The following definitions also apply to this program:

Allowable emissions means ''allowable emissions'' as defined in paragraph II.A.11 of appendix S to part 51 of this chapter, except that the allowable emissions for any emissions unit are calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

Enforceable as a practical matter means that an emission limitation or other standard is both legally and practically enforceable as follows:

(1) An emission limitation or other standard is ''legally enforceable'' if the reviewing authority has the right to enforce it.

(2) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a stationary source is achieved if the permit's provisions specify:

(i) A limitation or standard and the emissions units or activities at the stationary source subject to the limitation or standard;

(ii) The time period for the limitation or standard (*e.g.*, hourly, daily, monthly, and/or annual limits such as rolling annual limits); and

(iii) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(3) For rules and general permits that apply to categories of stationary sources, practicable enforceability additionally requires that the provisions:

(i) Identify the types or categories of sources that are covered by the rule or general permit;

(ii) Where coverage is optional, provide for notice to the reviewing authority of the source's election to be covered by the rule or general permit; and

(iii) Specify the enforcement consequences relevant to the rule or general permit.

Environmental Appeals Board means the Board within the EPA described in § 1.25(e) of this chapter.

Indian country, as defined in 18 U.S.C. 1151, means the following:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;[2]

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian governing body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Regulated NSR pollutant, for purposes of this program, means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated; or

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (1) or (2) of this definition, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

Reviewing authority means the Administrator and may mean an Indian tribe in cases where a tribal agency is assisting EPA with administration of the program through a delegation under § 49.173.

Synthetic minor HAP source means a stationary source that otherwise has the potential to emit HAPs in amounts that are at or above those for major sources of HAP in § 63.2 of this chapter, but that has taken a restriction such that its potential to emit is less than such amounts for major sources. Such restrictions must be enforceable as a practical matter.

Synthetic minor source means a stationary source that otherwise has the potential to emit regulated NSR pollutants in amounts that are at or above those for major stationary sources in appendix S to part 51 of this chapter, but that has taken a restriction such that its potential to emit is less than such

[2] Under this definition, EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.

amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term ''synthetic minor source'' applies independently for each regulated NSR pollutant that the stationary source has the potential to emit.

§ 49.168 Does this program apply to me?

(a) In a nonattainment area in Indian country, the requirements of this program apply to you under either of the following circumstances:

(1) If you propose to construct a new major stationary source (as defined in paragraph II.A.4 of appendix S to part 51 of this chapter) of the nonattainment pollutant.

(2) If you propose to construct a major modification at your existing major stationary source (as defined in paragraph II.A.5 of appendix S to part 51 of this chapter), where your source is a major stationary source of the nonattainment pollutant and the proposed modification is a major modification for the nonattainment pollutant.

(b) If you own or operate a major stationary source with a State-issued nonattainment major NSR permit, you must apply to convert such permit to a Federal permit under this program by [date 1 year and 60 days from date of publication of final rule]. In this case, you would not be subject to any additional requirements under this program.

(c) If you propose to establish a synthetic minor source or synthetic minor HAP source, or to construct a minor modification at your major stationary source, you will have to comply with the requirements of the Federal minor NSR program in Indian country at §§49.51 through 49.165 or other EPA-approved minor NSR program, as applicable.

§ 49.169 Permit approval criteria.

(a) *What are the general criteria for permit approval?* The general review criteria for permits are provided in paragraph II.B of appendix S to part 51 of this chapter. In summary, that paragraph basically requires the reviewing authority to ensure that the proposed new major stationary source or major modification would meet all applicable emission requirements in the EPA-approved implementation plan or FIP, any applicable NSPS in part 60 of this chapter, and any applicable NESHAP in part 61 or part 63 of this chapter, before a permit can be issued.

(b) *What are the program-specific criteria for permit approval?* The approval criteria or conditions for obtaining a major NSR permit for major stationary sources and major modifications locating in nonattainment areas are given in paragraph IV.A of appendix S to part 51 of this chapter. In summary, these are the following:

(1) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to this program.

(2) Certification that all existing major stationary sources owned or operated by you in the same State as the proposed source or modification are in compliance or under a compliance schedule.

(3) Emissions reductions (offsets) requirement for any source or modification subject to this program.

(4) A demonstration that the emission offsets will provide a net air quality benefit in the affected area.

§ 49.170 Emission offset requirement exemption.

An Indian governing body may seek an exemption from the emission offset requirement (*See* § 49.169(b)(3)) for major stationary sources and major modifications subject to this program that are located within the tribe(s Indian country pursuant to the following options:

(a) *Section 173(a)(1)(B) Economic Development Zone (EDZ) option.* Under section 173(a)(1)(B) of the Act, major stationary sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the Administrator, in consultation with the Department of Housing and Urban Development (HUD). Under the EDZ option, the Administrator would waive the offset requirement for such sources and modifications, provided that:

(1) The new major stationary source or major modification is located in a geographical area which meets the criteria for an EDZ, and the Administrator has approved a request from a tribe and declared the area an EDZ; and

(2) The State/tribe demonstrates that the new permitted emissions are consistent with the achievement of reasonable further progress pursuant to section 172(c)(4) of the Act, and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

(b) *Appendix S, paragraph VI option.* Pursuant to paragraph VI of appendix S to part 51 of this chapter, for a new major stationary source or major modification locating in a nonattainment area for which the attainment date has not yet passed, such source or modification would be exempt from all requirements of this program, including the offset requirement, provided all the following conditions are met:

(1) The new major stationary source or major modification complies with any applicable EPA-approved implementation plan or FIP emission limitations.

(2) The new major stationary source or major modification will not interfere with the attainment date for a regulated NSR pollutant.

(3) The Administrator has determined that conditions specified in paragraphs (b)(1) and (2) of this section are satisfied and such determination is published in the **Federal Register**.

§ 49.171 Public participation requirements.

(a) *What permit information will be publicly available?* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the reviewing authority must make available for public inspection the documents listed in paragraphs (a)(1) through (4) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the stationary source, such as the tribal environmental office or a local library.

(1) All information submitted as part of an application for a permit.

(2) Any additional information requested by the reviewing authority.

(3) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets) and your demonstration of a net air quality benefit in the affected area.

(4) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(b) *How will the public be notified and participate?* (1) Before issuing a permit under this program, the reviewing authority must prepare a draft permit and must provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in paragraphs (b)(1)(i) and (ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(i) The reviewing authority must mail a copy of the notice to you, the appropriate Indian governing body, and the tribal, State, and local air pollution authorities having jurisdiction in areas outside of the area of Indian country

potentially impacted by the air pollution source.

(ii) Depending on such factors as the nature and size of your stationary source, local air quality considerations, and the characteristics of the population in the affected area, the reviewing authority must use appropriate means of notification, such as those listed in paragraphs (b)(1)(ii)(A) through (E) of this section.

(A) The reviewing authority may mail or e-mail a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(B) The reviewing authority may post the notice on its Web site.

(C) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a tribal newspaper or newsletter.

(D) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, tribal environmental offices, community centers, or other gathering places in the community.

(E) The reviewing authority may employ other means of notification as appropriate.

(2) The notice required pursuant to paragraph (b)(1) of this section must include the following information at a minimum:

(i) Identifying information, including your name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact.

(ii) The name and address of the reviewing authority processing the permit action;

(iii) The regulated NSR pollutants to be emitted, the affected emissions units, and the emission limitations for each affected emissions unit;

(iv) The emissions change involved in the permit action;

(v) Instructions for requesting a public hearing;

(vi) The name, address, and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(vii) Locations and times of availability of the information (listed in paragraph (a) of this section) for public inspection; and

(viii) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments, and for requests for a public hearing.

(c) *How will the public comment, and will there be a public hearing?* (1) Any person may submit written comments on the draft permit and may request a public hearing. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.

(2) The reviewing authority must extend the public comment period under paragraph (b) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(3) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(4) The reviewing authority must hold a hearing whenever there is, on the basis of requests, a significant degree of public interest in a draft permit. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(5) The reviewing authority must make a tape recording or written transcript of any hearing available to the public.

§ 49.172 Final permit issuance and administrative and judicial review.

(a) *How will final action occur, and when will my permit become effective?* After decision on a permit, the reviewing authority must notify you of the decision, in writing, and if the permit is denied, of the reasons for such denial. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, general public, and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after permit issuance, unless:

(1) A later effective date is specified in the permit; or

(2) Review of the final permit is requested under paragraph (d) of this section (in which case the specific terms and conditions of the permit that may be the subject of the request for review must be stayed); or

(3) The draft permit was subjected to a public comment period and no comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

(b) *For how long will the reviewing authority retain my permit-related records?* The records, including any required applications for each draft and final permit or application for permit revision, must be kept by the reviewing authority for not less than 5 years.

(c) *What is the administrative record for each final permit?* (1) The reviewing authority must base final permit decisions on an administrative record consisting of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(v) Other documents in the supporting files for the permit that were relied upon in the decisionmaking;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit; and

(ix) Other documents in the supporting files for the draft permit that were relied upon in the decisionmaking.

(2) The additional documents required under paragraph (c)(1) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(3) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (c)(1) of this

section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(d) *Can permit decisions be appealed?* Permit decisions may be appealed according to the following provisions:

(1) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program, including informal appeals of denials of requests for modification, revocation and re-issuance, or termination of permits under paragraph (e)(2) of this section. An appeal directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(2) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Board to review any condition of the permit decision. Any person who failed to file comments and failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins when the reviewing authority has fulfilled the notice requirements for the final permit decision, unless a later date is specified in that notice.

(3) The petition must include a statement of the reasons supporting the review, including a demonstration that any issues identified were raised during the public comment period (including any public hearing) to the extent required by these regulations, unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law that is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

(4) The Board may also decide on its own initiative to review any condition of any permit issued under this program.

(5) Within a reasonable time following the filing of the petition for review, the Board must issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. If the Board grants review in response to requests under paragraph (d)(2) or (4) of this section, public notice must be given as provided in § 49.171(b). Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. If the Board denies review, the permit applicant and the person(s) requesting review must be notified through means that are adequate to assure reasonable access to the decision, which may include mailing a notice to each.

(6) A petition to the Board under paragraph (d)(2) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(7) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the reviewing authority and agency review procedures are exhausted. A final permit decision must be issued by the reviewing authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(8) Notice of any final agency action on a permit shall promptly be published in the **Federal Register**.

(9) Motions to reconsider a final order must be filed within 10 days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision must be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration, except in cases in which the Board has deferred to the Administrator and the Administrator has issued the final order. A motion for reconsideration must not stay the effective date of the final order unless specifically so ordered by the Board.

(10) For purposes of this section, time periods are computed as follows:

(i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.

(ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event, except as otherwise provided.

(iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.

(iv) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed time.

(e) *Can my permit be reopened?* Your permit can be reopened according to the following procedures:

(1) Any person (including the permittee) may petition the reviewing authority to reopen a permit for cause, and the reviewing authority may commence a permit reopening on its own initiative. The reviewing authority may not reopen a permit for cause unless it contains a material mistake or fails to assure compliance with applicable requirements. All requests must be in writing and must contain reasons supporting the request.

(2) If the reviewing authority decides the request is not justified, the reviewing authority must send the requestor a brief written response giving a reason for the decision. Denials of requests for revision, revocation and re-issuance, or termination are not subject to public notice, comment, or hearings. Denials by the reviewing authority may be informally appealed to the Board by a letter briefly setting forth the relevant facts. The Board may direct the reviewing authority to begin revision, revocation and re-issuance, or termination proceedings under paragraph (e)(3) of this section. The appeal must be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and re-issuance, or termination.

(3) If the reviewing authority decides the request is justified and that cause exists to revise, revoke and reissue or

terminate a permit, it shall initiate proceedings to reopen the permit.

§ 49.173 Administration and delegation of the nonattainment major NSR program in Indian country.

(a) *Who administers a nonattainment major NSR Program in Indian Country?* (1) If the Administrator has approved a TIP that includes a major NSR program for stationary sources in nonattainment areas of Indian country that meets the requirements of part D of title I of the Act and § 51.165 of this chapter, the tribe is the reviewing authority and will administer the approved major NSR program under tribal law.

(2) If the Administrator has not approved an implementation plan, the Administrator may delegate the authority to assist EPA with administration of portions of this Federal nonattainment major NSR program implemented under Federal authority to a tribal agency upon request, in accordance with the provisions of paragraph (b) of this section. If the tribal agency has been granted such delegation, it will have the authority to assist EPA according to paragraph (b) of this section.

(3) If the Administrator has not approved an implementation plan or granted delegation to a tribal agency, the Administrator is the reviewing authority and will directly administer all aspects of this Federal nonattainment major NSR program in Indian country under Federal authority.

(b) *Delegation of administration of the Federal nonattainment major NSR program to tribes.* This paragraph (b) establishes the process by which the Administrator may delegate authority to a tribal agency, with or without signature authority, to assist EPA with administration of portions of this Federal nonattainment major NSR program, in accordance with the provisions in paragraphs (b)(1) through (8) of this section. Any Federal requirements under this program that are administered by the delegate tribal agency will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation of the Federal nonattainment major NSR program and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.

(1) *Information to be included in the Administrative Delegation Request.* In order to be delegated authority to assist EPA with administration of this FIP permit program for stationary sources, the tribal agency must submit a request to the Administrator that:

(i) Identifies the specific provisions for which delegation is requested;

(ii) Identifies the Indian Reservation or other areas of Indian country for which delegation is requested;

(iii) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(A) A statement that the applicant is a tribe recognized by the Secretary of the Interior;

(B) A descriptive statement that is consistent with the type of information described in § 49.7(a)(2) demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area; and

(C) A description of the laws of the tribe that provide adequate authority to administer the Federal rules and provisions for which delegation is requested; and

(iv) Demonstrates that the tribal agency has the technical capability and adequate resources to administer the FIP provisions for which the delegation is requested.

(2) *Delegation of Partial Administrative Authority Agreement.* A Delegation of Partial Administrative Authority Agreement (Agreement) will set forth the terms and conditions of the delegation, will specify the provisions that the delegate tribal agency will be authorized to implement on behalf of EPA, and will be entered into by the Administrator and the delegate tribal agency. The Agreement will become effective upon the date that both the Administrator and the delegate tribal agency have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the delegate tribal agency will be responsible, to the extent specified in the Agreement, for assisting EPA with administration of the provisions of the Federal nonattainment major NSR program that are subject to the Agreement.

(3) *Publication of notice of the Agreement.* The Administrator will publish a notice in the **Federal Register** informing the public of any Agreement for a particular area of Indian country. The Administrator also will publish the notice in a newspaper of general circulation in the area affected by the delegation. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(4) *Revision or revocation of an Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate tribal agency.

(5) *Transmission of information to the Administrator.* When administration of a portion of the Federal nonattainment major NSR program in Indian country that includes receipt of permit application materials and preparation of draft permits has been delegated in accordance with the provisions of this section, the delegate tribal agency must provide to the Administrator a copy of each permit application (including any application for permit revision) and each draft permit. The applicant may be required by the delegate tribal agency to provide a copy of the permit application directly to the Administrator. With the Administrator's consent, the delegate tribal agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application, in place of the complete permit application. To the extent practicable, the preceding information should be provided in electronic format as requested by the Administrator.

(6) *Waiver of information transmission requirements.* The Administrator may waive the requirements of paragraph (b)(5) of this section for any category of stationary sources (including any class, type, or size within such category) by transmitting the waiver in writing to the delegate tribal agency.

(7) *Retention of records.* Where a delegate tribal agency prepares draft or final permits or receives applications for permit revisions on behalf of EPA, the records for each draft and final permit or application for permit revision must be kept by the delegate tribal agency for a period not less than 5 years. The delegate tribal agency must also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate tribal agency is implementing and administering the delegated program in compliance with the requirements of the Act and of this program.

(8) *Delegation of signature authority.* To receive delegation of signature authority, the legal statement submitted by the tribal agency pursuant to paragraph (b)(1) of this section must certify that no applicable provision of tribal law requires that a major NSR permit be issued after a certain time if the delegate tribal agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit).

(c) *Are there any non-delegable elements of the Federal nonattainment major NSR program in Indian country?*

The following authorities cannot be delegated outside of EPA:

(1) The Administrator's authority to object to the issuance of a major NSR permit.

(2) The Administrator's authority to enforce, revoke, or terminate permits issued pursuant to this program.

(d) *How will EPA transition its authority to an approved nonattainment major NSR program?* (1) The Administrator will suspend the issuance of nonattainment major NSR permits under this program promptly upon publication of notice of approval of an implementation plan with a major NSR permit program for nonattainment areas.

(2) The Administrator may retain jurisdiction over the permits for which the administrative or judicial review process is not complete and will address this issue in the notice of program approval.

(3) After approval of a program for issuing nonattainment major NSR permits and the suspension of issuance of nonattainment major NSR permits by the Administrator, the Administrator will continue to administer nonattainment major NSR permits until permits are issued under the approved implementation plan program.

§§ 49.174–49.175 [Reserved]

PART 51—[AMENDED]

4. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Appendix S to Part 51—[Amended]

5. Appendix S to Part 51 is amended by revising paragraph II.B to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

B. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed major new source and proposed major modification [1] to determine if such a source will meet all applicable emission requirements in the SIP, any applicable new source performance standard in 40 CFR part 60, or any national emission standard for hazardous air pollutants in 40 CFR part 61 or part 63. If the reviewing authority determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct must be denied.

* * * * *

[FR Doc. 06–6926 Filed 8–18–06; 8:45 am]

BILLING CODE 6560–50–P

[1] Hereafter the term *source* will be used to denote both any source and any modification.

Federal Register

Monday,
August 21, 2006

Part VI

General Services Administration

Privacy Act of 1974; Notice of Updated Systems of Records; Notice

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This notice is a compilation of the revised and cancelled notices. The notice includes thirteen revised GSA-wide system of records notices that update administrative changes, including system managers, office titles, addresses, or locations; and cancellation of eighteen obsolete systems of records.

DATES: Effective August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–501–1452; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA undertook and completed an agency-wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing updated Privacy Act systems of records notices and canceling obsolete systems. Rather than make numerous piecemeal revisions, GSA is republishing updated notices for thirteen of its systems and canceling eighteen. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records.

The table of contents provides a list of the revised notices included in this publication and the cancelled notices. (See attached.)

Dated: August 14, 2006.

June V. Huber,

Director, Office of Information Management.

Table of Contents

List of Revised Notices

GSA/PPFM–1 Disbursement and Accounts Payable Files
GSA/PPFM–3 Travel System
GSA/PPFM–6 Employee Credit Reports
GSA/PPFM–7 Credit Data on Individual Debtors
GSA/PPFM–8 Comprehensive Human Resources Integrated System (CHRIS)
GSA/PPFM–9 Payroll Accounting and Reporting (PAR) System
GSA/PPFM–10 Purchase Card Program
GSA/OEA–1 Records of Defunct Agencies
GSA/REGADM–4 Official Correspondence Files
GSA/FSS–13 Personal Property Sales Program
GSA/Childcare–1 GSA Child Care Subsidy
GSA/Transit–1 Transportation Benefits Records
GSA/Gov–4 Contracted Travel Services Program

List of Cancelled Notices

GSA/HRO–6 Listing of Physicians
GSA/HRO–7 Motor Vehicle Operator Applications
GSA/HRO–38 Citizens' Commission on Public Service and Compensation (CCPSC) Candidate and Alternate Member Files
GSA/PPFM–5 Payroll, Time, and Attendance Reporting System
GSA/OGC–2 Attorney Placement
GSA/OGC–4 General Law Files
GSA/OGC–6 Potential Employee Referrals
GSA/REGADM–3 Biographical Sketches
GSA/REGADM–6 Ridesharing System
GSA/PBS–3 Incident Reporting, Investigation, Contingency

Planning/Analysis, and Security Case Files

GSA/ADTS–1 Classified Control Files
GSA/ADTS–2 Congressional Files
GSA/ADTS–4 Emergency Notification Files
GSA/ADTS–5 Financial Management Files
GSA/ADTS–7 Workload Measurement Files
GSA/ADTS–8 Special Purpose Telephone Contact Listings
GSA/FSS–9 Cataloging Action Master File-Work Measurement
GSA/FSS–12 Accountability and Property Inventory Systems

GSA/PPFM–1

SYSTEM NAME:

Disbursement and Accounts Payable Files.

SYSTEM LOCATION:

System records are located in GSA's finance centers as follows:

- Heartland Finance Center, 1500 East Bannister Road, Kansas City, MO 64131.
- Greater Southwest Finance Center, 819 Taylor Street, Fort Worth, TX 76102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees; and contractual or appointed experts and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides for reporting each account's status. Records may include but are not limited to name, address, telephone number, vendor identification number, and Social Security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3501 *et seq.*; 40 U.S.C. 311; 5 U.S.C. 3109.

PURPOSE:

To assemble in one system disbursement and accounts payable records to GSA employees, and on experts and consultants procured by contract or by appointment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent necessary, the records are available outside GSA to monitor and document adverse action proceedings and to advise on credit inquiries.

The following routine uses also apply:

a. In a legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

i. To the Department of Treasury and/or banking institutions so that payments may be made by electronic funds transfer (EFT).

j. To the Department of Treasury so claims can be collected through cross servicing, Treasury Offset Program or the Centralized Salary Offset Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders and card files stored in filing cabinets, or in electronic form in computers.

RETRIEVABILITY:

Records are retrieved by name or by identifying number.

SAFEGUARDS:

Records are stored in guarded buildings and/or in areas controlled by authorized personnel. Computer files are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is in accordance with the Handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Director, Financial and Accounting Systems Division (BOA), Office of Finance, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about whether they are part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests to access records should be directed to the system manager at the above address. Inquiries should provide, as appropriate, full name, Social Security number, vendor number, address, telephone number, and the dates and transactions giving rise to the record. For identification requirements, refer to the agency regulations in 41 CFR part 105–64.

CONTESTING RECORD PROCEDURES:

GSA rules for access to records, and for contesting the contents and appealing initial determinations are provided in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

The individuals themselves, employees, other agencies, management officials, and non-Federal sources such as private firms.

GSA/PPFM–3

SYSTEM NAME:

Travel System.

SYSTEM LOCATION:

The system of records is located in the General Services Administration (GSA) Central Office service and staff offices and administrative offices throughout GSA.

PERSONS COVERED BY THE SYSTEM:

Current and former employees of GSA and of commissions, committees, and small agencies serviced by GSA, including persons other than full-time employees authorized to travel on Government business.

TYPE OF RECORD SYSTEM:

The system provides control over the expenditure of funds for travel, relocation, and related expenses. Therefore, provisions are made to authorize travel and relocation, provide and account for advances, and to pay for travel and relocation costs. The system contains records that may include, but are not limited to, name, Social Security Number, date of birth, residence address, dependents names and ages, duty stations, itinerary and credit data in the form of credit scores (examples of credit scores are FICO, an acronym for Fair Isaac Corporation, a Beacon score, etc.) or commercial and agency investigative reports showing debtors' assets, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. 5701–5709, 5 U.S.C. 5721–5739, and Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

PURPOSE:

To assemble in one system information supporting the day-to-day operating needs associated with managing the GSA travel and relocation programs. The system includes an automated information system and supporting documents.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSES IN USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the travel and relocation program. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

i. To banking institutions so that travelers may receive travel reimbursements by electronic funds transfer (EFT).

j. To the Department of the Treasury regarding overseas travel allowances that are excluded from taxable income, so that reports can be compiled and submitted to the Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders, card files and cabinets; magnetic tapes and cards are stored in cabinets and storage libraries; and computer records are stored within computers and attached equipment.

RETRIEVABILITY:

Paper records are filed by name. Electronic records are retrievable by name, vendor number (an identifier assigned by GSA to all payees, including companies and individuals), or Social Security Number.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic

records are protected by passwords and other appropriate security measures.

DISPOSAL:

The agency disposes of the records as described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2A and CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Finance, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Employees may obtain information about whether they are a part of this system of records from the system manager at the above address.

RECORD REVIEW PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

PROCEDURE TO CONTEST A RECORD:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR part 105–64.

RECORD SOURCES:

The sources are individuals, other employees, supervisors, other agencies, management officials, and non-Federal sources such as private firms.

GSA/PPFM–6

SYSTEM NAME:

Employee Credit Reports.

SYSTEM LOCATION:

The system is located in the General Services Administration, Heartland Finance Center, Financial Information Control Division, 1500 East Bannister Road, Kansas City, MO 64131.

PERSONS COVERED BY THE SYSTEM:

Present and former employees who have refused to abide by the terms of their training agreement or other employment-related contracts, and thereby have incurred a liability to the Government. When appropriate, similar information is gathered on their spouses.

TYPES OF RECORDS IN THE SYSTEM:

Name and address, age, number of dependents, name of employer, nature of business, position held/time held, full or part-time employment, net worth and what it consists of, annual earned income, other income, reputation, credit record, financial records, and personal history. The records are used in GSA to investigate employees who default on employment-related contracts.

AUTHORITY FOR MAINTAINING THE SYSTEM:

31 U.S.C. 3711 (e).

PURPOSE:

To assemble and maintain information on individuals who are indebted to GSA and other Federal entities for the purpose of effecting enforced collections from the debtors. The information contained in the records is maintained for the purpose of taking action to facilitate collection and resolution of debts using various methods, including, but not limited to, requesting repayment of debt by telephone or in writing, pursuing offset, administrative wage garnishment, centralized salary offset, referral to collection agencies or litigation, and using other collection or resolution methods authorized or required by law. The information is also maintained for the purpose of providing collection information about the debt to other Federal entities collecting the debt, and providing statistical information on debt collection operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING TYPES OF USERS AND THE PURPOSES OF SUCH USES:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records for both GSA and the expert, consultant or contractor are stored on paper.

RETRIEVABILITY:

The records are in alphabetical order by name.

SAFEGUARDS:

Correspondence between the GSA and the expert, consultant or contractor is kept in a locked cabinet in the Financial Information Control Division, Credit and Finance Section. Only persons given authority to do so handle this information. The contractor keeps his or her records in a secured office.

RECORD DISPOSAL:

The records are disposed of as scheduled in the handbook GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Chief, Accounts Receivable Branch, Regional Finance Division, 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

Obtain this information from the official named above.

PROCEDURES TO ACCESS OR TO CONTEST RECORDS:

See 41 CFR, part 105–64 for the procedures.

SOURCES OF RECORDS:

Credit companies, individuals, employers/supervisors, former employers, banks, and GSA credit investigators.

GSA/PPFM–7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following GSA Central Office and regional addresses of the GSA Office of Finance: GSA Building, 1800 F Street, NW., Washington, DC 20405, 1500 East Bannister Road, Kansas City, MO 64131, Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include employees, former employees, and other individuals who are indebted to GSA or any other agency or department of the United States; a State, territory or commonwealth of the United States, or

the District of Columbia (hereinafter collectively referred to as ''States''); or individuals that may become indebted to GSA or another agency or department of the United States as the result of a privately owned vehicle (POV) being involved in an accident with a GSA Fleet vehicle.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain information from commercial and agency investigative reports showing debtors' assets, liabilities, income, and expenses; identifying information, such as names and taxpayer identification numbers (TINs) (*i.e.*, Social Security Numbers or employer identification numbers); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. The records for claims against nongovernmental individuals (i.e., claims arising from vehicle accidents) may contain information on privately owned vehicles (POVs), including, but not limited to: (a) The owner, year, make, model, tag number and State of the vehicle; and (b) the driver's or owner's insurance company information, including name, address, telephone number and policy number. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, third party claims, and other amounts of money or property owed to, or collected by, GSA, any other Federal entity or a State, including past due support that is being enforced by a State.

The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date of debt origination, the amount of delinquency or default, date of delinquency or default, the basis for the debt, the amounts accrued for interest, penalties, and administrative costs; and the payments on the account; (b) actions taken to collect or resolve the debt, such as demand letters or invoices sent, documents or information required for referral of accounts to collection agencies, to other Federal entities, or for litigation, and notes taken regarding telephone or other communications related to the collection or resolution of the debt; and (c) the referring or collecting governmental entity that is collecting or is owed the debt, such as the name, telephone number, and address of the governmental entity contact.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514, 31 U.S.C.3701 and 3702, 31 U.S.C. 3711 *et seq.*, 31 U.S.C. 6503, and 26 U.S.C. 6402.

PURPOSE:

The purpose of the system is to assemble and maintain information on individuals who are indebted to GSA, other Federal entities, and States for the purpose of effecting enforced collections from the debtors, including past due support enforced by States. The information contained in the records is maintained for the purpose of taking action to facilitate collection and resolution of debts using various methods, including, but not limited to, requesting repayment of debt by telephone or in writing, pursuing offset, levy, administrative wage garnishment, centralized salary offset, referral to collection agencies or litigation, and using other collection or resolution methods authorized or required by law. The information is also maintained for the purpose of providing collection information about the debt to other Federal entities or States collecting the debt, providing statistical information on debt collection operations, and testing and developing enhancements to computer systems containing the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, 5 U.S.C. 552a(b), GSA may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal government on GSA's behalf. GSA may negotiate with the debtor for voluntary repayment or may initiate administrative or salary offset procedures or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982, 5 U.S.C. 5514, or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To any Federal, State or local agency, U.S. Territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

(1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: Requests for repayment by telephone or in writing; negotiation of voluntary repayment or compromise agreements; offsets of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process; referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation; obtaining administrative and court-ordered wage garnishment; conducting debt sales; publishing names and identities of delinquent debtors in the media or other appropriate places; creating a Centralized Salary Offset program; and pursuing any other debt collection method authorized by law.

(2) To conduct computerized comparisons to locate Federal payments to be made to debtors.

(3) To conduct authorized computer matching programs in compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, to identify and locate individuals receiving Federal payments (including but not limited to salaries, wages and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures.

(4) To collect a debt owed to GSA, another Federal entity, or State through the offset of payments made by States, territories, commonwealths, or the District of Columbia.

(5) To account for or report on the status of debts for which such entity has

a financial or other legitimate need for the information in the performance of official duties.

(6) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to GSA or another Federal entity or who owes delinquent child support that has been referred to GSA for collection by administrative offset.

(7) To develop, enhance, and/or test databases, matching communications, or other computerized systems that facilitate debt collection processes.

(8) To provide assistance with any other appropriate debt collection purpose.

g. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

h. To any individual or entity:

(1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: Pursuing administrative or court-ordered wage garnishment; reporting information to commercial credit bureaus; conducting asset searches; publishing the names and identities of delinquent debtors in the media or other appropriate places; conducting debt sales; or initiating Centralized Salary Offsets.

(2) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to the United States or delinquent child support that has been referred to GSA for collection by administrative offset.

(3) To pursue any other appropriate debt collection purpose, such as to credit reporting agencies or credit bureaus for the purpose of adding to a credit history file or obtaining a credit history file or comparable credit information for use in debt collection. As authorized by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA may report current (not delinquent) and delinquent consumer or commercial debts to these entities to aid the collection of debts, typically by providing an incentive to the person to repay the debt in a timely manner. GSA may report on delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

i. To the Internal Revenue Service and applicable State and local governments for tax reporting purposes. Under the provisions of the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA is permitted to provide the Department of Treasury with Form 1099–C information on canceled or forgiven debts so that the Department of Treasury may file the form on GSA's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including payments to persons not treated as employees *(e.g.*, fees paid to consultants and experts) and amounts written-off as legally or administratively uncollectible in whole or in part.

j. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

k. To the Department of Treasury or other Federal agency with whom GSA has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of GSA to satisfy, in whole or in part, debts owed to the United States. Cross servicing includes the possible use of all debt collections tools such as administrative offset, referral to debt collection contractors, and referral to the Department of Justice.

I. To the Department of Treasury, government corporations, State or local agencies, or other Federal agencies to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the United States under certain programs administered by the GSA in order to collect the debts under the provisions of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514, or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, by voluntary payment or administrative or salary offset procedures.

m. To the National Archives and Records Administration (NARA) for records management purposes.

n. To or from the Department of Treasury for the purpose of allowing the GSA National Payroll Center (NPC) to participate in the Centralized Salary Offset (CSO) program, or similar offset program. Agencies must notify the Department of Treasury of all delinquent debts over 180 days past due so that recovery may be made by centralized administrative offset. This includes debts that GSA seeks to recover from the pay account of an employee of another agency by salary offset, or by another agency seeking recovery from a GSA employee, including client agency employees, by salary offset.

o. To or from another agency or department of the United States when a GSA Fleet vehicle has been involved in an accident with an individual or commercial POV. Disclosure to consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3) and 3711(e).

p. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in lockable filing cabinets and in electronic form in computers or on electronic media.

RETRIEVABILITY:

Credit data is maintained by debtor name and claim number and is cross-referenced with the Social Security Number (when available) to verify name and address.

SAFEGUARDS:

When not in use by authorized personnel, records are stored in lockable filing cabinets. Electronic files are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records are a part of the GAO site auditing collection files and are cut off at the end of the fiscal year, held 1 year, and then retired under Record Group 217 (GAO). Records created prior to July 2, 1975, will be retained by GAO for 10 years and 3 months after the period of the account. Records created on or after July 2, 1975, will be retained by GAO for 6 years and 3 months after the period of the account.

SYSTEM MANAGER AND ADDRESS:

Branch Chief (BCDR), Financial Initiatives Division, Office of Finance, Office of the Chief Financial Officer, General Services Administration, Room 3121, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals under the Privacy Act of 1974, as amended (5 U.S.C. 552a) regarding claims pertaining to themselves should be addressed to the system manager. All individuals making inquiries should provide as much descriptive information as possible to identify the particular record desired. The system manager will advise

as to whether GSA maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include the individual's name and address.

CONTESTING RECORDS PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 105.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individual debtors; credit bureaus; agency investigative reports; other GSA systems of records; Federal and State agencies to which debts are owed; Federal employing agencies and other entities that employ the individual; Federal and State agencies issuing payments; collection agencies; locator and asset search companies; Federal, State or local agencies furnishings identifying information and/or addresses of debtors; or from public documents.

GSA/PPFM–8

SYSTEM NAME:

Comprehensive Human Resources Integrated System (CHRIS)

SYSTEM LOCATION:

The record system is an Oracle web-based application used by GSA Services and Staff Offices, Presidential Boards and Commissions, and small agencies serviced by GSA, at the addresses below:

- GSA Central Office, 1800 F Street, NW., Washington, DC 20405.
- National Capital Region, 7th & D Streets, SW., Washington, DC 20407.
- New England Region, 10 Causeway Street, Boston, MA 02222.
- Northeast and Caribbean Region, 26 Federal Plaza, New York, NY 10278.
- Mid-Atlantic Region, 20 N. Eighth Street, Philadelphia, PA 19107.
- Southeast Sunbelt Region, 77 Forsyth Street, Atlanta, GA 30303.
- Great Lakes Region, 230 South Dearborn Street, Chicago, IL 60604.
- The Heartland Region, 1500 East Bannister Road, Kansas City, MO 64131.
- Greater Southwest Region, 819 Taylor Street, Fort Worth, TX 76102.
- Pacific Rim Region, 450 Golden Gate Avenue, San Francisco, CA 95102.
- NARA, 9700 Page Blvd., St. Louis, MO.
- NARA, 8601 Adelphi Road, College Park, MD 20740–6001.
- OPM, 1900 E Street, NW., Washington, DC 20415.
- OPM, 1137 Branchton Road, Boyers, PA 16020.
- RRB, 844 N. Rush, Chicago, IL 60611.
- NCUA, 1775 Duke Street, Alexandria, VA 22314.
- Export-Import Bank of the U.S., Washington, DC 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the General Services Administration, Presidential Boards and Commissions, and small agencies serviced by GSA, including persons in intern, youth employment, and work-study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel and training records. The records include information collected by operating officials and personnel officials administering programs for or about employees. The system has data needed to update the Central Personnel Data File (CPDF), the Enterprise Human Resources Integration (EHRI), and the Electronic Official Personnel Folder (eOPF) at the Office of Personnel Management (OPM), as well as process and document personnel actions. It may include, but is not limited to, the data maintained in each employee's Official Personnel Folder, including:

a. Employee's name, Social Security Number, date of birth, gender, work schedule, type of appointment, education, veteran's preference, military service, and race or national origin.

b. Employee's service computation date for leave, date probationary period began, and date of performance rating.

c. Pay data such as pay plan, occupational series, grade, step, salary, and organizational location.

d. Performance rating and types and amounts of awards.

e. Position description number, special employment program, and target occupational series and grade.

f. Training records that show what classes employees have taken.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C., part III, is the authority for maintaining personnel information. Authorities for recording Social Security Numbers are E.O. 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

PURPOSE:

To maintain a computer based information system supporting the day-to-day operating needs of human resource operations and management. The system is designed to meet information and statistical needs of all types of Government organizations and provides a number of outputs.

For the Office of the Chief People Officer, the system tracks, produces and stores personnel actions, and supplies HR data used to generate reports (organizational rosters, retention registers, retirement calculations, Federal civilian employment, length-of-service lists, award lists, etc.). It also provides reports for monitoring personnel actions to determine the impact of GSA policies and practices on minorities, women, and disabled persons, analyzing their status in the work force; and for establishing affirmative action goals and timetables. The system also provides management data for administrative and staff offices.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the system is used by GSA associates and designated client agency representatives in the performance of their official duties as authorized by law and regulation and for the following routine uses:

a. To disclose information to the Office of Personnel Management (OPM) for the Central Personnel Data File (CPDF) and the Enterprise Human Resources Integration (EHRI).

b. To disclose information to sources outside GSA, including other agencies and persons; for employees seeking employment elsewhere; and for documenting adverse actions, conducting counseling sessions, and preparing biographical sketches on employees for release to other agencies and persons.

c. To disclose information in the personnel file to GSA's Office of the Chief People Officer.

d. To disclose information to agency staff and administrative offices who may restructure the data for management purposes.

e. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

f. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

g. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

h. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

i. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

j. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

k. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer records are stored on a secure server and accessed over the web using encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, or Employee ID.

SAFEGUARDS:

Computer records are protected by a password system. Paper output is stored in locked metal containers or in secured rooms when not in use. Information is released to authorized officials based on their need to know.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

CHRIS Program Manager (CID), Office of the Chief Information Officer, Office of the Chief People Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Address inquiries to: Director of Human Resources Services (CP), Office of the Chief People Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405; or, for regional personnel records, to the regional Human Resources Officer at the addresses listed above under System Location.

CONTESTING RECORD PROCEDURES:

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for the system information are the individuals themselves, other employees, supervisors, management officials, officials of other agencies, and record systems GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

GSA/PPFM–9

SYSTEM NAME:

Payroll Accounting and Reporting (PAR) System.

SYSTEM LOCATION:

The record system is located in the General Services Administration (GSA) Heartland Finance Center in Kansas City, Missouri; in commissions, committees and small agencies serviced by GSA; and in administrative offices throughout GSA. Data is stored in an Oracle database (ORA2) on the HFC1 server. The operational functionality of PAR is managed and utilized by the GSA Heartland Finance Center's National Payroll Center (NPC) in Kansas City.

PERSONS COVERED BY THE SYSTEM:

Those covered are present and former employees of GSA and of commissions, committees, and small agencies serviced by GSA; and persons in intern, youth employment, and work/study programs.

TYPE OF RECORD SYSTEM:

PAR provides complete functionality for an employee's entire service life from initial hire through final payment and submission of retirement records to the Office of Personnel Management (OPM). The system holds payroll records, and includes information received by operating officials as well as personnel and finance officials administering their program areas, including information regarding nonsupport of dependent children. The system also contains data needed to perform detailed accounting distributions, provide for tasks such as mailing checks and bonds, and preparing and mailing tax returns and reports. The record system may contain:

a. Employee's name, Social Security Number, date of birth, sex, work schedule, and type of appointment.

b. Service computation date for assigning leave, occupational series, position, grade, step, salary, award amounts, and accounting distribution.

c. Time, attendance, and leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

d. Tables of data for editing, reporting, and processing personnel and pay actions, which include nature-of-action code, organization table, and salary table.

e. Information regarding court-ordered payments to support dependent children, including amounts in arrears.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. Part III, Subparts D and E, 26 U.S.C. Chapter 24 and 2501, and E.O. 9397.

PURPOSE:

To maintain automated information system to support the day-to-day operating needs of the payroll program. The system can provide payroll statistics for all types of Government organizations, and allows many uses for each data element entered. The system has a number of outputs:

For the payroll office, outputs include comprehensive payroll reports; accounting distribution of costs; leave data summary reports; each employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; Forms W–2, Wage and Tax Statement; and reports of withholding and contributions.

For the Office of Human Resources Services, outputs include data for reports of Federal civilian employment. The system also provides data to GSA staff and administrative offices to use for management purposes.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSE IN USING THE SYSTEM:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose requested information to a court or other authorized agency regarding payment or nonpayment of court-ordered support for a dependent child.

c. To disclose information to Congressional staff in response to a request from the person who is the subject of the record.

d. To disclose information to an expert, consultant, or contractor of the agency for performing a Federal duty.

e. To disclose information to a Federal, State, or local agency maintaining civil, criminal, enforcement, or other information to obtain information needed to make a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.

f. To disclose requested information to a Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; or clarifying a job.

g. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator;

union official or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

h. To disclose information to the Office of Management and Budget for reviewing private relief legislation at any stage of the clearance process.

i. To provide a copy of the Department of the Treasury Form W–2, Wage and Tax Statement, to the State, city, or other local jurisdiction that is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

j. To disclose information to the Office of Human Resources Services in reporting civilian employment.

k. To disclose information to agency administrative offices who may restructure the data for management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders, within locked power files; microfiches in cabinets; and computer records within a computer and attached equipment. All paper records are secured with the National Payroll Center (NPC), which is a secured area at the GSA NPC in Kansas City, Missouri.

RETRIEVAL:

Records are filed by name or Social Security Number at each location.

SAFEGUARDS:

Records are stored in locked power files, within the NPC in Kansas City, when not in use by an authorized person. Electronic records are protected by a password system. The NPC is a secured access facility.

DISPOSAL:

The Heartland Finance Center disposes of the records by shredding or burning, as scheduled in the handbook GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Director, National Payroll Center, General Services Administration (6BCY), 1500 East Bannister Road, Kansas City, MO 64131.

NOTIFICATION PROCEDURE:

An individual inquiry should be addressed to the system manager.

RECORD REVIEW PROCEDURES:

An individual request should be addressed to the 33 system manager. Furnish full name, Social Security Number, address, telephone number, approximate dates and places of employment, and nature of the request.

PROCEDURE TO CONTEST A RECORD:

GSA rules for contesting the content of a record and appealing an initial decision are in 41 CFR part 105–64.

RECORD SOURCES:

The sources are the individuals themselves, other employees, supervisors, officials of other agencies, State governments, record systems GSA/HRO–37, OPM/GOVT–1, EEOC/GOVT–1, and private firms.

GSA/PPFM–10

SYSTEM NAME:

Purchase Card Program.

SYSTEM LOCATION:

System records are maintained by the Office of Finance, General Services Administration (GSA), at 1800 F Street, NW., Washington, DC 20405, and by designated purchase card coordinators' offices in GSA regions. Contact the System Manager for additional information.

PERSONS COVERED BY THE SYSTEM:

The system includes employees of GSA, and of independent offices and commissions serviced by GSA, who qualify to use Federal Government charge cards for making authorized purchases for official business.

TYPE OF RECORD SYSTEM:

The system provides control over expenditure of funds through the use of Federal Government purchase cards. System records include:

a. Personal information on charge card users, including names, home or business telephone numbers and addresses, Social Security Numbers, date of birth, employment information, and credit data in the form of credit scores (examples of credit scores are FICO, an acronym for Fair Isaac Corporation, a Beacon score, etc.) or commercial and agency investigative reports showing debtors' asset, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies; and

b. Account processing and management information, including charge card transactions, contractor monthly reports showing charges to individual account numbers, account balances, and other data needed to authorize, account for, and pay authorized purchase card expenses.

AUTHORITY FOR MAINTAINING THE SYSTEM:

41 U.S.C. 252a, 252b, 427, 428; E.O. 12931, and Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

PURPOSE:

To establish and maintain a system for operating, controlling, and managing the purchase card program involving commercial purchases by authorized Government employees.

ROUTINE USES OF THE RECORD SYSTEM, INCLUDING TYPES OF USERS AND THEIR PURPOSES IN USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the purchase card program. Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM–7).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVAL:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A–130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2A and cia P 1820.1), and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Finance, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

A Privacy Act Statement on the purchase card data collection form notifies individuals of the purpose and uses of the information they provide. Employees may obtain information about whether they are a part of this system of records from the system manager at the above address.

RECORD REVIEW PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

PROCEDURE TO CONTEST A RECORD:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR part 105–64.

RECORD SOURCES:

Information is obtained from individuals submitting charge card applications, monthly contractor reports, purchase records, managers, other agencies, non-Federal sources such as private firms, and other agency systems containing information pertaining to the purchase card program.

GSA/OEA–1

SYSTEM NAME:

Records of Defunct Agencies.

LOCATION:

The system of records is located in the GSA regional office building, 7th & D Streets, SW., Washington, DC 20407, and at the GSA National Payroll Center, 6BCY, 1500 E. Bannister Road, Kansas City, MO 64131–3088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of defunct agencies, including but not limited to, presidential commissions, committees, small agencies, and boards, whose records the GSA services under a reimbursable agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and financial records, including but not limited to, time and attendance cards, payment vouchers, employee health benefit records, requests for deductions, tax forms, including W–2 forms, overtime requests, leave data, retirement records, and vendor register and payment tapes.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. Part III, Subparts D and E, 26 U.S.C. Chapter 24 and 3501, E.O. 9397, and 31 U.S.C. 1531.

PURPOSE:

To notify the public of the routine use and storage of payroll, personnel and financial records stored by GSA for defunct agencies that are sensitive in nature.

ROUTINE USES OF THE RECORDS IN THE SYSTEM, INCLUDING TYPES OF USERS AND THE PURPOSES OF THE USES:

The GSA uses the records for concluding the administrative operations of the defunct agency. Routine uses include providing a copy of an employee's Department of the Treasury Form W–2, and Wage and Tax Statement, to the State, city, or other local jurisdiction that has authority to tax the employee's pay. The agency also provides a record under a withholding agreement between a State, city, or other jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520, or in response to the written request of an authorized official of the taxing jurisdiction to the Director, GSA National Payroll Center (6BCY), 1500 East Bannister Road, Kansas City, MO 64131–3088. The request must include a copy of the statute or ordinance showing the authority of the jurisdiction to tax the employee based on place of residence, place of employment, or both.

Under a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), the GSA furnishes copies of executed city tax withholding certificates to the city in response to a written request from the proper city official to the GSA official named in the paragraph above.

Records are also released to the Government Accountability Office for audits and to the Internal Revenue Service for use in investigations. Additional routine uses are:

a. To disclose a record to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, or regulation, or order, where the GSA becomes aware of an indication of a violation, or potential violation of a civil or criminal law or regulation.

b. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

c. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMS), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant and a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

g. To disclose a record to the OPM concerning pay, benefits, retirement deductions, and other information needed under that agency's responsibility to evaluate Federal personnel management.

h. To the National Archives and Records Administration (NARA) for records management purposes.

To the extent that official personnel records in the GSA's custody are covered 40 within systems of records published by the OPM as Government-wide records, the records are considered part of the Government-wide system. Other personnel records covered by notices published by the GSA and considered to be separate systems of records may be transferred to the OPM

under personnel programs as a routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are in file folders and card files. Microfiche records on microfiche sheets are stored in cabinets. CD–ROMs and floppy disks are stored in file cabinets.

RETRIEVABILITY:

Payroll records are retrievable by social security number and other records by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in locked metal containers or in secured rooms.

RETENTION AND DISPOSAL:

The Division Director of the Agency Liaison Division disposes of the records as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

The system managers are the Director, Agency Liaison Division (WB–E), General Services Administration, 7th & D Streets, SW., Washington, DC 20407 and the GSA National Payroll Center, 6BCY, 1500 E. Bannister Road, Kansas City, MO 64131–3088.

NOTIFICATION PROCEDURE:

Requests to review or receive a copy of a record should be sent to the system manager named above.

RECORD ACCESS PROCEDURE:

See 41 CFR part 105–64, published in the **Federal Register,** for the procedures. Address your written request to review or copy records to the system manager, with the words ''Privacy Act Request'' written on the letter and on the envelope.

CONTESTING RECORD PROCEDURE:

See 41 CFR part 105–64.

RECORD SOURCES:

When it shuts down, the agency that the GSA services, publishes a notice in the **Federal Register** transferring administrative responsibility for the records to the GSA.

GSA/REGADM–4

SYSTEM NAME:

Official Correspondence Files.

SYSTEM LOCATION:

The system is located in the offices of the Regional Administrators listed below.

New England Region (R1), Office of the Regional Administrator (1A), Room 1008, 10 Causeway Street, Boston, MA 02222.

Southeast Sunbelt Region (R4), Office of the Regional Administrator (4A), 77 Forsyth Street, Atlanta, GA 30303.

The Heartland Region (R6), Office of the Regional Administrator (6A), 1500 East Bannister Road, Kansas City, MO 64131.

Greater Southwest Region (R7), Office of the Regional Administrator (7A), 819 Taylor Street, Fort Worth, TX 76102.

Rocky Mountain Region (R8), Office of the Regional Administrator (8A), Building 41, Denver Federal Center, Denver CO 80225–0006.

Pacific Rim Region (R9), Office of the Regional Administrator (9A), 450 Golden 42 Gate Avenue, San Francisco, CA 94102–3400.

Northwest/Arctic Region (R10), Office of the Regional Administrator (10A), 400 15th Street SW., Auburn, WA 98001.

INDIVIDUALS COVERED BY THE SYSTEM:

The individuals are those who correspond with the Regional Administrators regarding savings bond campaigns, employees receiving letters of appreciation or commendation, Members of Congress, mayors and their staffs, and other persons.

TYPES OF RECORDS IN THE SYSTEM:

The records are incoming letters, background material, and outgoing letters to the persons named in the system. The system serves as a record and reference source of correspondence in the offices of the Regional Administrators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining the system comes from Title 5, U.S.C., section 301.

ROUTINE USES OF THE RECORDS IN THE SYSTEM, INCLUDING THE TYPES OF USERS AND THEIR PURPOSES IN USING THE SYSTEM:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when:

1. GSA, including any component or employee being represented by GSA or the U.S. Department of Justice, has an interest in the litigation or proceeding;

2. GSA deems disclosure necessary and relevant to the nature of the proceedings; and

3. GSA determines that disclosure is compatible with the purpose for which the record was compiled.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Paper records are kept in file folders; electronic records are stored in computers and attached equipment.

RETRIEVAL:

Records are filed alphabetically by name of person or firm.

SAFEGUARDS:

Access is limited to the Regional Administrator and staff who have a need to know.

RETENTION AND DISPOSAL:

The schedules in the handbook, GSA Records Maintenance and Disposition System (GAD P 1820.2A), govern the disposal of the records.

SYSTEM MANAGERS AND ADDRESSES:

The officials responsible for the record system are the Regional Administrators at the addresses given at the beginning of this notice.

NOTIFICATION PROCEDURE:

A requester may learn whether the system contains a record on him-or herself from the Regional Administrators at the addresses given above.

RECORD ACCESS PROCEDURE:

A request to view a record must be addressed to the Regional Administrator at one of the addresses given above.

CONTESTING RECORD PROCEDURE:

For GSA rules to contest the content of a record or to appeal a denial of a request to amend a record, see 41 CFR part 105–64, published in the **Federal Register**.

RECORD SOURCES:

The sources are the correspondence and related records.

GSA/FSS–13

SYSTEM NAME:

Personal Property Sales Program.

SYSTEM LOCATION:

System records are maintained by the General Services Administration (GSA) at several locations. A complete list of the locations is available from the System Manager.

INDIVIDUALS COVERED BY THE SYSTEM:

The system will include those individuals 45 who request to be added to GSA bidders' mailing lists, register to bid on GSA sales, and enter into contracts to buy Federal personal property at sales conducted by GSA.

RECORDS IN THE SYSTEM:

The system contains information needed to identify potential and actual bidders and awardees, and transaction information involving personal property sales. System records include:

a. Personal information provided by bidders and buyers, including names, phone numbers, addresses, Social Security Numbers, and credit card numbers or other banking information; and

b. Contract information on Federal personal property sales, including whether payment was received, the form of the payment, notices of default, and contract claim information.

AUTHORITY FOR MAINTAINING THE SYSTEM:

40 U.S.C. 121 (c) and 40 U.S.C. 541, *et seq.*

PURPOSE:

To establish and maintain a system of records for conducting public sales of Federal personal property by GSA.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to prepare for and conduct personal property sales, administer sales contracts, perform oversight or maintenance of the GSA electronic systems and, when necessary, for sales contract litigation or non-procurement suspension or debarment purposes.

INFORMATION FROM THIS SYSTEM ALSO MAY BE DISCLOSED AS A ROUTINE USE:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the GSA Office of Finance for debt collection purposes (see GSA/PPFM–7).

h. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Information may be collected on paper or electronically and may be stored on paper or on electronic media, as appropriate.

RETRIEVABILITY:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2), and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Property Management Division (FBP), Federal Supply Service, General Services Administration, 2200 Crystal Drive, Crystal Plaza 4, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by individuals who wish to participate in the GSA personal property sales program, and system transactions designed to gather and maintain data and to manage and evaluate the Federal personal property disposal program.

GSA/Childcare-1

SYSTEM NAME:

Child Care Subsidy.

SYSTEM LOCATION:

This system of records is maintained by the Office of the Chief People Officer (C), 1800 F Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the General Services Administration who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for child care subsidy containing personal information, including employee (parent) name, Social Security Number, grade, home and work numbers addresses, telephone numbers, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy; information on child care providers used, including name, address, provider license number and State where issued,

tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58 and E.O. 9397.

PURPOSE:

To establish and verify GSA employees' eligibility for child care subsidies in order for GSA to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; of the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILLITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable metal file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGER AND ADDRESS:

Office of the Chief People Officer (C), Office of Human Capital Management (CH), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to: Office of the Chief People Officer (C), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by GSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

GSA/Transit–1

SYSTEM NAME:

Transportation Benefits Records.

SYSTEM LOCATION:

System records are maintained by the Office of the Chief People Officer (C), 1800 F Street, NW., Washington, DC 20405; and by each of GSA's regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for transit subsidies for use of public transportation and van pools to and from the workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories may include name, home address, Social Security Number, work organization and location, mode of transportation, and commuting costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13150; 26 U.S.C. 132(f); and Federal Employees Clean Air Incentives Act (section 2(a) of Pub. L. 103–172, found at 5 U.S.C. 7905), as amended.

PURPOSE:

To establish and maintain systems for providing transportation fringe benefits to employees who use mass transportation to commute to and from work.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

System information is used to determine the eligibility of applicants for transportation benefits and to disburse benefits to eligible employees through the Department of Transportation. Information also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

System records are stored electronically and on paper.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identifier in the system.

SAFEGUARDS:

Records are safeguarded in accordance with the Privacy Act and the Computer Security Act. Technical, administrative, and personnel security measures ensure confidentiality and

integrity of system data. Access is limited to 53 authorized individuals.

RETENTION AND DISPOSAL:

Applications will be maintained for as long as the applicant is an eligible participant in the subsidy program. System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Office of the Chief People Officer (C), Office of Human Capital Management (CH), General Services Administration, 1800 F Street, NW, Washington, DC 20405.

NOTIFICATION PROCEDURES:

Inquiries should be directed to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests for access to records should be directed to the system manager. GSA rules for accessing records under the Privacy Act are provided in 41 CFR part 105–64.

RECORD CONTESTING PROCEDURES:

Requests to correct records should be directed to the system manager. GSA rules for contesting record contents and for appealing determinations are provided in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Sources for information in the system are: employees submitting applications for transit subsidies.

GSA/GOVT–4

SYSTEM NAME:

Contracted Travel Services Program.

SYSTEM LOCATION:

System records are located at the service providers under contract with a Federal agency and at the Federal agencies using the contracts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are Federal employees authorized to perform official travel, and individuals being provided travel by the Federal government.

CATEGORIES OF RECORDS IN THE SYSTEM:

System records include a traveler's profile containing: name of individual; Social Security Number; employee identification number; home and office telephones; home address; home and office e-mail addresses; emergency contact name and telephone number; agency name, address, and telephone number; air travel preference; rental car identification number and car preference; hotel preference; current passport and/or visa number(s); credit card numbers and related information; bank account information needed for electronic funds transfer; frequent traveler account information (*e.g.*, frequent flyer account numbers); trip information (*e.g.*, destinations, reservation information); travel authorization information; travel claim information; monthly reports from travel agent(s) showing charges to individuals, balances, and other types of account analyses; and other official travel related information.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511, 3512, and 3523; 5 U.S.C. Chapter 57; and implementing Federal Travel Regulations (41 CFR parts 300–304).

PURPOSE:

To establish a comprehensive beginning-to-end travel services system containing information to enable travel service providers under contract to the Federal government to authorize, issue, and account for travel and travel reimbursements provided to individuals on official Federal government business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: INFORMATION IN THE SYSTEM MAY BE DISCLOSED AS A ROUTINE USE AS FOLLOWS:

a. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To another Federal agency or a court when the Federal government is party to a judicial proceeding.

c. To a Member of Congress or staff on behalf and at the requests of the individual who is the subject of the record.

d. To a Federal agency employee, expert, consultant, or contractor in performing a Federal duty for purposes of authorizing, arranging, and/or claiming reimbursement for official travel, including, but not limited to, traveler profile information.

e. To a credit card company for billing purposes, including collection of past due amounts.

f. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant.

g. To a Federal agency by the contractor in the form of itemized statements or invoices, and reports of all transactions, including refunds and adjustments to enable audits of charges to the Federal government.

h. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

i. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains.

j. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

k. To officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

l. To a travel services provider for billing and refund purposes.

m. To a carrier or an insurer for settlement of an employee claim for loss of or damage to personal property incident to service under 31 U.S.C. 3721, or to a party involved in a tort claim against the Federal government resulting from an accident involving a traveler.

n. To a credit reporting agency or credit bureau, as allowed and authorized by law, for the purpose of adding to a credit history file when it has been determined that an individual's account with a creditor with input to the system is delinquent.

o. Summary or statistical data from the system with no reference to an identifiable individual may be released publicly.

p. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file cabinets. Electronic records are maintained within a computer (*e.g.*, PC, server, etc.) and attached equipment.

RETRIEVABILITY:

Paper records are filed by a traveler's name and/or Social Security Number/employee identification number at each location. Electronic records are retrievable by any attribute of the system.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by a password system and a FIPS 140–2 compliant encrypted Internet connection. Information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records kept by a Federal agency are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Transportation and Property Management (FB), Federal Acquisition Service, General Services Administration, Room 300, 2200 Crystal Drive, Arlington, VA 20406.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel. Individuals must furnish their full name and/or Social Security Number to the authorizing agency for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate administrative office for the agency that authorized and/or reimbursed their travel. Individuals must furnish their full name and/or Social Security Number along with the name of the authorizing agency, including duty station where they were employed at the time travel was performed.

RECORD SOURCE CATEGORIES:

The sources are the individuals themselves, employees, travel authorizations, credit card companies, and travel service providers.

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Federal Register

Monday,
August 21, 2006

Part VII

Department of Labor

Employee Benefits Security Administration

Employee Benefit Plans—Notice of Proposed Individual Exemption Involving the Plumbers & Pipefitters National Pension Fund (the Fund) and Grant of Individual Exemption for the Southwest Gas Corporation (Southwest Gas); Notices

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11183, et al.]

Proposed Exemptions; Notice of Proposed Individual Exemption Involving the Plumbers & Pipefitters National Pension Fund (the Fund)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11183]

Notice of Proposed Individual Exemption Involving the Plumbers & Pipefitters National Pension Fund (The Fund) Located in Alexandria, VA

Proposed Exemption

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective June 5, 2001, to the transactions described below involving the receipt by Diplomat Properties, Limited Partnership (DPLP or the Partnership) of certain services and products from the hotel management company, Westin Management Company East (after January 12, 2006, Westin Hotel Management, L.P.) (referred to collectively with its parent company, Starwood Hotels & Resorts Worldwide, Inc., as Starwood) and certain related entities (Related Companies), retained to operate the Partnership's principal asset, the Westin Diplomat Resort & Spa and the Diplomat Country Club and Spa (collectively, the Resort), provided that there is adherence to the material facts and representations contained in the Application and satisfaction of the applicable requirements described in Parts II and III below.

I. Exemption Transactions

(a) The provision of Centralized Services or Additional Services (collectively, the Proposed Services) to the Resort by Starwood or a Related Company;

(b) The purchase of goods from Starwood or a Related Company in connection with the provision of Centralized Services or Additional Services (Purchase of Goods); and

(c) The participation of the Resort in the Associate Room Discount Program (ARD Program).

II. General Conditions

(a) LaSalle, CHM or a successor independent QPAM for the Partnership, will represent the interests of the Partnership for all purposes with respect to the Proposed Services and the Purchase of Goods for the duration of the arrangement. The QPAM, on behalf of the Partnership, through negotiation and execution of the Operating Agreements and periodic monitoring of the Proposed Services and the Purchase of Goods, determines that:

(1) Starwood's provision of Centralized Services and Additional Services to the Resort is in the best interests and protective of the participants and beneficiaries of the Plumbers & Pipefitters National Pension Fund (the Fund).

(2) The terms under which the provision of Centralized Services and Additional Services are provided by Starwood to the Resort are at least as favorable to the Resort as those which the Partnership could obtain in arm's length transactions with unrelated parties in the relevant market;

(3) The overall cost of services and products charged by Starwood to the Resort on a centralized basis is consistent with the amounts charged by other potential branded operators; and

(4) The Centralized Services and Additional Services made available by Starwood and its affiliates are provided at prices and on terms at least as favorable to the Partnership as are available in the relevant market from

unrelated parties and reflect the same prices and terms as are offered by Starwood and its affiliates to other properties managed by Starwood and its affiliates in the ordinary course of business.

(b) Under the Operating Agreements, at all times that the Partnership is using Centralized Services and Additional Services, Starwood has acknowledged in writing:

(1) Starwood's fiduciary status under section 3(21)(A) of the Act, with respect to the Resort; and

(2) Starwood's indemnification of the Partnership with respect to any claims, demands, actions, penalties, suits and liabilities arising from Starwood's breach of fiduciary duty or violation of the Act.

(c) On an annual basis, the QPAM, on behalf of the Partnership, approves the participation of the Resort in Centralized Services and Additional Services as part of its approval of the Resort's Annual Operating Plan.

(d) During any year, subject to exceptions for certain Variable Expenses or Uncontrollable Expenses, Starwood does not, without the approval of the QPAM, incur any cost or expense or make any expenditure with respect to Centralized Services or Additional Services that would: (i) Cause the total expenditures for any line item in the Annual Operating Plan that includes payment of fees for Centralized Service or Additional Services to exceed the budgeted expense for that line item by more than 10%; (ii) cause total expenditures for any department of the Resort that pays fees for Centralized Service or Additional Services to exceed the budgeted expenses for that department by more than 5%; or (iii) cause the actual aggregate expenditures for operating expenses or capital expenditures to exceed the budget by more than 2%.

(e) All purchases of products and services by Starwood from (i) itself, (ii) any person or entity directly or indirectly controlling, or controlled by, or under common control with Starwood, or (iii) any entity in which Starwood or its affiliates have any ownership, investment or management interest or responsibility are first approved by the QPAM (as part of the approval of the Annual Operating Plan or otherwise), except in cases of purchases of not more than $50,000 per annum where the price paid or charged for each such purchase and the terms thereof are lower than those that could be obtained from unrelated third parties in the applicable location.

(f) The QPAM approves (as part of the approval of the Annual Operating Plan or otherwise) all contracts for Additional Services (and, to the extent applicable, Centralized Services) that provide for aggregate annual expenditure or revenue of more than $50,000 or have a term of more than one year.

(g) The fees charged to the Resort for Centralized Services can be increased only on a system-wide basis (*i.e.*, not just for the Resort).

(h) The fees for Centralized Services are not greater than the lowest of: (i) the fees initially agreed upon by the parties in the Operating Agreement; (ii) Starwood's prevailing fee for the services or products as generally charged by Starwood or its affiliates to other properties managed by it; (iii) Starwood's cost, with no profit or mark-up (although it may include overhead); or (iv) 5% of gross revenues (exclusive of certain occupancy-related charges, such as third-party reservations fees and frequent guest program charges) of the hotel or country club, as applicable.

(i) Starwood does not, with respect to any Centralized Service or Additional Service, solicit bids for the product or service in a manner that could result in a ''right of first refusal'' or other bidding advantage for the benefit of Starwood or its affiliates.

(j) The QPAM, on behalf of the Partnership, has the right to opt out of any Centralized Services and to elect not to receive any Additional Services.

(k) The QPAM, on behalf of the Partnership, retains the right to conduct audits of transactions entered into by Starwood with respect to Centralized Services and Additional Services, and, in the event that an audit uncovers a discrepancy related to any payment to Starwood or its affiliates, it must be corrected within ten days of notice being provided.

(l) As part of its monitoring responsibilities, the QPAM, on behalf of the Partnership, has the right to meet with representatives of Starwood no less frequently than monthly (and otherwise at the request of the Partnership) for the purposes of reviewing each Annual Operating Plan, preparing, reviewing and updating rolling three-month forecasts for the Resort, and analyzing Starwood's actual performance against the Annual Operating Plan and the performance of the Resort relative to an applicable competitive set of resorts.

(m) The QPAM, on behalf of the Partnership, retains the right to receive monthly interim and annual accounting reports that include a comparison of actual to budgeted expenses, and to have such reports audited by an independent accounting firm not more than once in any fiscal year.

III. ARD Program Conditions

(a)(1) Rooms are not made available to employees or associates of Starwood or a Related Company pursuant to the Associate Room Discount Program if the rooms could otherwise be sold to the public at a higher rate; and

(2) In each case, the discounted rates fully cover the variable cost to the Resort for the use of the room and the cost to the Resort of the food, beverage and amenities.

(b) Participation in the Associate Room Discount Program is offered by Starwood at all of its owned properties and properties that it manages.

(c) The QPAM, acting on behalf of the Partnership, monitors the Resort's participation in the Associate Room Discount Program and retains the right to opt out of the Associate Room Discount Program.

IV. Definitions

(a) The term ''Partnership'' means Diplomat Properties, Limited Partnership whose principle asset is the Resort. The Plumbers & Pipefitters National Pension Fund (the Fund) is the sole member of Diplomat Properties, LLC, the General Partner of the Partnership. The QPAM is a non-member manager of the General Partner.

(b) The term ''QPAM'' means LaSalle Investment Management, Inc. (LaSalle), Capital Hotel Management, LLC (CHM) or a successor qualified professional asset manager (as defined in section V(a) of Prohibited Transaction Class Exemption 84–14 at 49 FR 9494, March 13, 1984), as amended at 71 FR 5887 (February 3, 2006) or such other entity that is permitted by a U.S. Department of Labor individual exemption to function with powers similar to that of a qualified professional asset manager, that is exercising discretionary authority on behalf of the Fund with respect the activities of the Partnership and the Resort.

(c) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Related Company'' means wholly or partially owned

affiliates of Starwood (including, without limitation, affiliates of Starwood that are parties in interest by virtue of section 3(14)(G), (H) or (I) of the Act or disqualified persons by virtue of sections 4975(e)(2)(G), (H), or (I) of the Code) or affiliates or other entities in which Starwood has an ownership or other contractual interest.

(f) The term ''Additional Services'' means any service or product other than Centralized Services: (1) Which is provided to the Resort by Starwood or a Related Company and is typically provided by Starwood or a Related Company on a property by property basis to properties operated by Starwood or an affiliate; and (2) for which Starwood or a Related Company receives a fee for providing such service or product that is based on the level of usage by the Resort.

(g) The term ''Annual Operating Plan'' means the annual written operating plan submitted by Starwood to the Partnership no later than 90 days before the commencement of each fiscal year, which plan shall include monthly estimates and cover the operating budget (including departmental revenue and expenses, taxes, insurance and reserves), the capital budget, the marketing plan, the advertising program, working capital requirements, litigation and any other matter reasonably deemed appropriate by the QPAM, on behalf of the Partnership.

(h) The term ''Associate Room Discount Program'' means the program maintained by Starwood with the approval of the QPAM pursuant to which discounted room rates and discounted food, beverage and other amenities at participating hotels are provided for Starwood associates or associates of participating Starwood franchise hotels worldwide and their immediate family.

(i) The term ''Centralized Services'' means any service or product, including (without limitation) certain advertising, marketing and promotional activities (including frequent guest programs), reservations and distribution systems and networks, training and similar items, provided that: (i) The service or product is provided to the Resort by Starwood or a Related Company and is typically provided by Starwood or a Related Company on a central, regional, chain or brand basis, rather than specifically at an individual property; and (ii) Starwood or a Related Company receives a fee for providing the service or product that is based on the level of usage by the Resort.

(j) The term ''Operating Agreements'' means, collectively, the parallel operating agreements, executed on June 5, 2001, between LaSalle and Starwood, as amended, to brand and operate the Resort's convention hotel as the ''Westin Diplomat Resort and Spa,'' and to brand and operate the country club as ''The Diplomat Country Club and Spa,'' as part of Starwood's Luxury Collection, and any successor operating agreements that may be in effect between the parties or successor parties from time to time.

(k) The term ''Variable Expense,'' as set forth in the Operating Agreements, means operating expenses covered by the then-current Annual Operating Plan that reasonably fluctuate as a direct result of business volumes, including food and beverage expenses, other merchandise expenses, operating supply expenses, and energy costs.

(l) The term ''Uncontrollable Expenses,'' as set forth in the Operating Agreements, means certain expenses the amount of which cannot be controlled by Starwood, which expenses include, without limitation, real estate taxes, utilities, insurance premiums, license and permit fees and charges provided in contracts entered into pursuant to the Operating Agreement, provided, that Starwood agrees to use commercially reasonable efforts to mitigate the expenses under such contracts; and the QPAM, on behalf of the Partnership, agrees that Starwood shall have the right to pay all Uncontrollable Expenses without reference to the amounts provided for in respect thereof in the approved Annual Operating Plan.

Summary of Facts and Representations

1. The Application for this proposed exemption is submitted by LaSalle Investment Management, Inc. (LaSalle), as qualified professional asset manager (QPAM) for, and on behalf of, the Plumbers & Pipefitters National Pension Fund (the Fund). By letter dated April 30, 2006 (LaSalle Letter), LaSalle informed the Department that as of April 30, 2006, LaSalle was replaced by Capital Hotel Management, LLC (CHM) as the QPAM for the Fund.[1] The Fund is a Taft-Hartley, multi-employer, defined benefit pension fund, as defined in section 3(37) of ERISA. The Fund is funded solely by employer contributions negotiated under collective bargaining agreements with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (the Union). The Fund is administered by the Board of Trustees of the Fund (the Board), which has six individual members, three of whom are appointed by employers who contribute to the Fund, and three of whom are appointed by the Union. By letter dated July 14, 2006 from CHM to the Department (CHM Letter), CHM stated that as of July 1, 2005, the Fund had 66,513 active participants, 17,697 terminated vested participants and 37,062 retirees and beneficiaries in pay status. As of July 1, 2006, the Fund had approximately $4.295 billion in total assets.

2. The Application states that on August 19, 1997, the Union entered into a contract to acquire the Resort and related property from an unaffiliated third party (a wholly owned subsidiary of Union Labor Life Insurance Company). In late September 1997, the Union caused the Partnership and its general partner, Diplomat Properties, Inc. (the General Partner), to be organized, with the Union as the initial sole limited partner of the Partnership and the sole owner of Diplomat Properties, Inc. The Partnership was assigned the right to acquire the Resort and arranged to borrow $40 million from a third-party lender to fund the acquisition of the Resort and such related property. On October 7, 1997, the Union assigned its interests in both the Partnership and its General Partner to the Fund, in exchange for the Fund's agreement to make a capital contribution to the Partnership of $40 million plus certain costs incurred by the Union in connection with the acquisition of the Resort and related property. On October 9, 1997, the Partnership acquired the Resort from the third party seller for a purchase price of approximately $40 million (plus reimbursement of certain expenses to the Union); it thereupon repaid the loan from the third party lender. As a result, the Fund became the indirect owner of the Resort. The LaSalle Letter noted that ''the Fund paid off the $40 million bank loan. That $40 million paid by the Fund was treated as a capital contribution by the Fund to the Partnership.''

The Fund applied for an exemption from the prohibited transaction provisions of ERISA and the Code, on October 3, 1997 for the acquisition of the Resort. On November 15, 1999, the Department granted PTE 99–46, at 64 FR 61944, which provided conditional relief for the Fund's acquisition of the Resort from the Union. Additional undertakings agreed to by the Fund, pursuant to an October 13, 1999 Term Sheet, were incorporated by reference into PTE 99–46. The Fund agreed to the appointment of Actuarial Sciences Associates (ASA) as the independent named fiduciary of the Fund's account that holds the interests in the Partnership, the General Partner and

[1] See below for information on the April 30, 2006 appointment of CHM as QPAM for the Fund.

other assets of the Fund invested in, or awaiting investment in, the Resort (the Diplomat Account). ASA's responsibilities were subsequently assumed, with the Department's approval, by its wholly owned subsidiary, ASA Fiduciary Counselors, Inc. (ASA Counselors). ASA Counselors resigned its appointment, effective as of November 3, 2000.

On September 12, 2000, the Board and Independent Fiduciary Services, Inc. (IFS) entered into an Independent Named Fiduciary Agreement (the IFS Agreement), the terms of which were reviewed and approved by the Department prior to its execution, pursuant to which IFS was appointed, effective as of November 3, 2000, as the successor independent named fiduciary of the Fund with respect to the Diplomat Account. A more complete description of the general background and history of the development of the Resort is set forth in the Department's grant of PTE 2001–39 at 66 FR 53439, October 22, 2001 (PTE 2001–39), providing relief to IFS which is similar to the relief provided under Prohibited Transaction Class Exemption 84–14 at 49 FR 9494, March 13, 1984 (PTE 84–14).

3. In September 2002, the Department filed a lawsuit entitled *Chao* v. *Maddaloni, et al.*, Case No. 02–61289, in the United States District Court for the Southern District of Florida, in which the Partnership and the Fund trustees were named as defendants. The relevant facts are set forth in the Complaint filed in such action by the Department alleging that the trustees failed to prudently manage and invest the Fund's assets through their involvement in the Resort project. The suit arose from the Fund's acquisition and development of the Resort project, beginning in 1997. The Secretary alleged that the trustees acted imprudently and without regard to the Fund participants' interests in entering into, and continuing the project, specifically by failing to obtain, prior to the expenditure of Fund assets, necessary analyses for the evaluation of the economic feasibility of the project, failing to determine the Fund's rate of return, or risk, on the investment, failing to evaluate the qualifications and experience of various contractors with whom they entrusted discretionary authority with respect to the disposition of Fund assets, and paying excessive and unreasonable fees and expenses to the contractors. In August 2004, the parties signed a final Consent Order resolving the claims contained in this action.[2] Prior to the Fund's retention of IFS, the Department notified the Partnership that it had begun an investigation of the use of the Fund's assets in the development of the Resort.[3]

4. The Applicant represents that, pursuant to IFS's authority as independent named fiduciary, and after an extensive due diligence process, which involved issuing a comprehensive request for proposal to numerous major real estate investment managers and personal interviews with several finalist candidates, IFS appointed LaSalle, effective December 14, 2000, pursuant to a comprehensive discretionary investment management agreement (the QPAM Agreement), to serve as the QPAM for the Diplomat Account, with broad discretionary powers to manage the Diplomat Account.

The Application notes that LaSalle, a member of the Jones Lang LaSalle group (JLL), is a leading global real estate investment manager with approximately $21.5 billion of public and direct real estate assets under management. LaSalle represents many of the world's largest and most sophisticated institutional investors, has expertise in the management of all major real property types (including hotels) and frequently acts as an ERISA fiduciary and QPAM for its clients. Various divisions of JLL have assisted (and will continue to assist) LaSalle in connection with the Resort, subject to LaSalle's supervisory authority. Since its appointment, LaSalle has become integrally involved in all aspects of the Diplomat Account, and has made all of the business, operational and fiduciary decisions for the Diplomat Account, pursuant to the QPAM Agreement (subject to the oversight or approval of IFS, as appropriate). The fees of IFS are paid by the Fund; the fees of LaSalle are paid by the Partnership.

In April 2003, Diplomat Properties, Inc. was converted to its present form, a limited liability company, and it is now known as Diplomat Properties, LLC (DPLLC). The Fund is the sole member of DPLLC, and both IFS and LaSalle are non-member managers of DPLLC. DPLLC remains the General Partner of the Partnership (DPLP).

5. The Resort, located in the cities of Hollywood and Hallandale Beach, Florida, was initially constructed in the late 1950s and consisted of several parcels. The original Diplomat Hotel operated as a premier hotel and country club catering to the middle-income convention trade, but has been closed since 1992. Since their appointment, IFS and LaSalle have overseen the continuing development and initial operation of the Resort, including the construction, development and opening of a destination resort with multiple operating components, including a 998-room ocean-front convention hotel with multiple food and beverage outlets and recreational facilities, a 217,000 square-foot convention center, two marinas, a country club (with 60 guest rooms, approximately 8,000 square feet of meeting space, and a clubhouse), a 30,000 square-foot spa, an 18-hole golf course and a tennis center.

6. The Application states that the process of selecting a third-party operator for the Resort formally commenced on or about April 1, 2000, at which time Hotel Investment Partners (HIP), a hotel consulting firm selected by ASA, sent a request for proposal to potential operators. Upon its retention in December 2000, LaSalle reviewed the documentation collected in connection with HIP's initial search for an operator. LaSalle determined that it should conduct further analyses and reach its own conclusions regarding the appropriate operator for the Resort because, among other things, it found, as had IFS, that the initial process was not sufficiently organized or documented. During the first few months of 2001, IFS and LaSalle spent a significant amount of time and effort conducting due diligence and a competitive bidding process for the selection of a world-class branded hotel operator for the Resort.

LaSalle performed a comprehensive review of the relevant issues, with the assistance of its affiliate, Jones Lang LaSalle Hotels (JLL Hotels) (a hotel advisory group staffed by lodging industry professionals experienced in hotel operations, hotel asset management and hotel transactions, including financing), and in coordination with IFS and its consultant, Strategic Hospitality Advisors (a hospitality consultant that regularly advises institutional clients on

[2] The Application states that LaSalle has been informed that the Fund is the successor to the former Sabine Area Pipefitters Local No. 195 Pension Trust Fund, which was involved in the correction of a 1988 prohibited transaction that had occurred before the former Local 195 Pension Fund merged into the Fund in 1990. IFS has further been informed that the correction of the prohibited transaction did not involve any assets of the Fund except to the extent that the Local 195 Joint Apprenticeship Committee was assessed first tier excise taxes under section 4975 of the Code for its use of assets of the former Local 195 Pension Fund.

[3] Although the Department has requested documents relating to various aspects of the Resort's development and operation, LaSalle states that it is unaware of any investigation or enforcement action that is targeted at the retention of Starwood or its provision of services and/or products to the Resort.

the investment characteristics of hotel and resort properties, including feasibility, acquisition, planning, design, construction, operation and disposition of hotels and resorts) (SHA). Based on such review, LaSalle concluded that the retention of a third-party operator for the Resort was an important component to securing any necessary financing and ensuring that the Fund's investment in the Project will be managed in a profitable and professional manner. LaSalle further concluded that the Partnership should consider retaining a major operating company that has a significant internal infrastructure and global marketing resources.

The Application notes that, in light of these conclusions, LaSalle then distributed a second, very detailed request for proposal to ten hotel operating companies, which companies then competed for the right to manage the Resort. The selected candidates included many of the larger international hotel operating companies, including several brands. After a detailed analysis of each candidate's written response to the request for proposal and a comprehensive analysis of the performance of the candidates' comparable properties, LaSalle concluded that, given the Resort's size, location and recent history, the selected operator should have a strong brand, including a marketing program, a group sales network and global distribution and reservations systems, in order to maximize revenues throughout the year in an area of the country (south Florida) primarily known as a seasonal destination.

This conclusion was based in part on the fact that, while there are large-scale independent resort hotels in south Florida that operate successfully without the benefit of an operator's brand, those resorts are located in the more primary, upscale destinations of Boca Raton, Palm Beach and Miami and, in most instances, are established hotels that have been operating for many years. In addition, outside the key destination markets, such as Orlando, New York, Los Angeles and Chicago, there are, according to JLL Hotels, only eight independent hotels with over 800 rooms. In fact, LaSalle observed that all recently opened hotels over 1,000 rooms have been affiliated with a branded ''chain.''

Through a rigorous interview process, coupled with a detailed analysis of each candidate's written response to the request for proposal and a comprehensive analysis of the performance of the candidates' comparable properties, the original field of ten was then narrowed to three major operators—Starwood, Marriott International and Hyatt. Further interviews and negotiations with each of these three operator candidates, including an on-site review of the Resort by each company and a review of their comments to a proposed operating agreement, resulted in the selection of Starwood and Marriott International as finalists for negotiation. Following meetings with each of these companies and their counsel to review their comments on the proposed operating agreement, LaSalle selected Starwood, through its operating subsidiary, Westin Management Company East (effective as of January 12, 2006, Westin Management Company East assigned its interest in the Operating Agreements (described below) to Westin Hotel Management, L.P., a wholly-owned subsidiary of Starwood Hotels & Resorts Worldwide, Inc.) (Westin), as the candidate of first choice.

Starwood is one of the world's preeminent international hotel owners and operators (with brands including St. Regis, W Hotels, Westin and Sheraton). Among other items considered by LaSalle in selecting Starwood was LaSalle's conclusion that the overall cost of services and products offered by Starwood on a centralized basis was consistent with the amounts charged by other potential operators.

7. The Application represents that following extensive negotiations with Starwood, on June 5, 2001, LaSalle, on behalf of the Partnership (Owner), and Starwood (Operator) signed parallel operating agreements (collectively, the Operating Agreements) to brand and operate the Resort's convention hotel and spa as the ''Westin Diplomat Resort and Spa'' and to brand and operate the country club as ''The Diplomat Country Club and Spa,'' as part of Starwood's Luxury Collection. In the Operating Agreements, Starwood specifically acknowledged, represented and warranted that it is a ''fiduciary,'' as defined in section 3(21)(A) of ERISA, with respect to the Resort and all assets of the Fund subject to the Operating Agreements, and that it is not subject to any of the disqualifications described in section 411 of ERISA.

The Applicant asserts that the 15-year term of each of the Operating Agreements evidences Starwood's significant, long-term business and financial commitment to the Resort. The Operating Agreements required Starwood to provide up to $4 million to pay for various pre-opening expenses. The Application states that Starwood also agreed to provide loans to the Resort (without recourse to the general assets of the Fund, other than the Diplomat Account) to fund, among other things and subject to certain conditions, up to $11.75 million in operating cash flow shortfalls at any given time and up to $50 million for debt service shortfalls at any given time.

8. The Application states that Starwood, like other national or international branded hotel operating companies, provides many of its services and products through itself or through wholly or partially owned affiliates (including, without limitation, the Starwood ERISA Affiliates [4] or other entities in which Starwood has an ownership interest (all such affiliates or other entities referred to herein as the Related Companies).[5] Many of these services and products, such as certain advertising, marketing and promotional activities (including frequent guest programs), reservations and distribution systems and networks, training and the like, are typically provided on a central, regional, ''chain'' or ''brand'' basis, rather than specifically at a property (such services and products referred to herein as Centralized Services). Other

[4] The parties in interest are Starwood Hotels & Resorts Worldwide, Inc., its wholly owned subsidiary, Westin Management Company East, and certain related entities that, because of their relationship with Starwood, are parties in interest by virtue of sections 3(14) (G), (H) or (I) of ERISA or disqualified persons by virtue of sections 4975(e) (2) (G), (H), or (I) of the Code (Starwood ERISA Affiliates).

[5] The Application notes that Starwood has disclosed to the Fund that its corporate and operating structure includes divisions or departments within Starwood or its operating subsidiary Westin Management Company East and a variety of affiliates that regularly deal with Starwood's network or ''chain'' of branded properties to provide both ''centralized'' services and products and regular, property-specific services and sources of supply. As operator of the components of the Resort, Starwood has presented an operating plan that will include obtaining certain products and/or services for the Resort (including the Centralized Services and Additional Services defined below) from Starwood, its affiliates and other Related Companies, subject to all the restrictions in the applicable Operating Agreement.

In the LaSalle Letter, LaSalle further explained that the Applicant is requesting an exemption in order to permit Starwood to contract on behalf of the Applicant with any entity in which Starwood has an interest which arguably might affect its independent judgment. Because of the many and diverse entities in which Starwood from time to time has an economic interest and which are included in its operating programs, it is not feasible to break down the various types of relationships or to speculate how large an economic interest would have to be to create a prohibited transaction. Therefore, in order to cover all parties in which Starwood has an interest that might arguably affect its judgment, Starwood includes all entities in which it has an investment, even if the investment is very minor, as ''Related Companies.'' The references to ''ERISA Affiliates'' and ''subsidiaries'' are descriptive only and not meaningful to the Applicant because they are included in the larger group of ''Related Companies'' for which relief is requested.

services or products (the Additional Services) are provided by Starwood or Related Companies on a property by property basis to properties operated by Starwood.[6] Starwood has informed LaSalle that, where that is the case, these Additional Services are offered to properties owned and operated by Starwood, as well as to properties operated, but not owned, by Starwood (such as the Resort); in each case on the same basis.

The Application provides the following list of entities in which Starwood owns a minor equity interest and with which the Resort may enter into arrangements for products or services: LastMinute.com—On-line provider of last-minute travel and entertainment packages.

Plansoft Corporation—On-line meeting planning company that provides meeting planning and technology and services including the listing of basic meeting information on Starwood hotels.

Brightware—Software licensor of e-mail automation and interactive one-to-one marketing solutions.

Worldres—On-line Internet reservation network service provider for hotels and other lodging establishments that allows end-users to check availability and make real-time reservations.

Big Vine—On-line business-to-business barter marketplace.

Site 59.com Inc.—On-line provider of last-minute travel and entertainment packages.

Classwave Wireless Inc.—Canadian company with a global strategy to transform the delivery of data to and from mobile devices.

StarCite Inc.—On-line meeting planning company that provides meeting planning and technology and services including the listing of basic meeting information on Starwood hotels.

Hotel Distribution Systems LLC—Joint venture to create a stable, low cost, high quality online distribution outlet for the services and products of its members currently consisting of Starwood, Hilton Hotels Corporation, Marriott International Hotels, Inc. Six Continents Hotels, Inc. and Pegasus Solutions, Inc.

The Application notes that although the foregoing identifies the types of arrangements that Starwood currently expects to enter into with itself and Related Companies with respect to the Resort, it is possible that, due to changing business needs, other arrangements with these or other Related Companies will be consummated subject to the terms of the Operating Agreements.

9. The Applicant states that the primary services and products provided by Starwood and its affiliates are classified as Centralized Services. In some cases, the products provided by Starwood and its affiliates (with respect to both Centralized Services and Additional Services) are incidental to the services it provides; in others they are not. Centralized Services, and the fee structure applicable thereto, were set forth in the Operating Agreements negotiated and executed by LaSalle for the Resort and were, therefore, approved by a QPAM. Changes to services and products or fees are presented to and approved, if applicable, by LaSalle in connection with the annual budget process (as described below). In addition, the amount of fees for Centralized Services is limited as described above to, among other limitations, the cost incurred by Starwood and its affiliates with no mark-up or profit. The Application provides a description of the Additional Services, Centralized Services and fees proposed in connection with the Operating Agreements.[7] The Partnership (through LaSalle) has the right to opt out of any Centralized Service.

The Applicant provides that Centralized Services for which fees are payable to Starwood and affiliates include the following major components:

Reservations Services, for which there are fees based on gross room revenue and per room charges, plus additional fees for specialized services.

Frequency Programs, which are the preferred guest programs and airline programs used to increase loyalty to the Starwood brands. Fees are a percentage of qualified charges[8] plus usage fees for training, program materials, program audits, bonus points and customer service.

Sales and Marketing Services, for which there is a fee based on gross revenues plus certain specified transaction based fees.

Human Resources, which provides administration of employee benefits and payroll for the Resort for a per capita and per check fee respectively.

Information Technology, which includes the Integrated Property System, which is the standard and mandated property management system for all Starwood hotels and resorts; the Starwood SAP Accounting System; Technology Management Services; Revenue Management Services, and Network Services. Oracle has been selected as Starwood's database for all future systems, including StarwoodONE, the Starwood company portal. In order to use StarwoodONE (and any of the following systems: Opera PMS, Starwood Customer Relationship Marketing System, Topline Prophet, and Rate Shopper), the Resort must participate in the Starwood Enterprise Oracle License Program, either through a purchase of the right to use the licenses or payment of an annual user fee.

The Application notes that, in addition, it will become mandatory over the next few years for all Starwood hotels to offer high-speed Internet services in accordance with Starwood's Broadband Standards. Broadband refers to the technology infrastructure that delivers large amounts of data, voice and video over a network. There are two components to the Broadband Standards—the Guest Portal Standards and the Broadband Technology Standards. The Starwood Broadband

[6] Starwood subsidiaries that may be involved in the provision of the Centralized Services and Additional Services to the Resort include the following: Galaxy Hotel Systems LLC; Westel Insurance Company; Westin Payroll Company; Westin Management Company East; Global Connextions, Inc.; and Starwood Reservations Corporation. LaSalle notes that, as used in the Application, the term ''subsidiary'' refers to entities that are majority owned by Starwood; however, this distinction is not meaningful because the Application covers transactions with all Related Companies, which is a broader term that encompasses minority subsidiaries.

[7] The Fund notes that due to the ever changing nature of the hospitality business, it is anticipated that services and products (whether Centralized Services or Additional Services) may be added, discontinued or modified from time to time in the future, subject to the limitations and LaSalle's rights to approve any such changes as described in the Operating Agreements.

[8] In the LaSalle Letter, LaSalle explained that ''qualified charges'' are charges on the guest's room account based on the U.S. dollars or equivalent spent on eligible room rate, food and beverage, direct dialed telephone, laundry/valet, and in-room movies only. Qualified charges also include food and beverage charges of US$10 or more in participating Starwood dining outlets, even if the guest is not a registered guest. Other charges such as parking, business center, retail stores, greens fees, etc., as well as taxes, gratuities, service charges and other applicable charges, such as energy charges, resort fees, etc, are not qualified charges. Banquet or meeting room charges billed back to a member's room are not qualified charges. Amounts earned or accrued for charges master-billed or paid by wholesale rates including WFNR, and all other rates from pre-paid channels, such as but not limited to, priceline.com, expedia.com, hotels.com, hrn.com, hotwire.com, lastminute.com, site59.com, etc. tour or tour operator or other vouchers or for certain other discounted rates including, without limit, airline vouchers or for certain other discounted rates are also not qualified charges. Charges from tour operator rates; wholesaler rates; stays longer than 30 days, Free Night Awards, TAED rates; room rates billed to master account, crew room rates, and employee rates are not qualified charges.

Guest Portal is the customer access point to the Internet and is a mandatory Westin standard requiring the payment of fees to Starwood based on estimates by Starwood of its costs and expenses. The costs and expenses are tracked by Starwood and the fees are adjusted up or down as appropriate. The Broadband Technology Standard can be met by the property by using the Starwood Broadband Solution or another solution that meets required standards.

Internal Audit Services, with fees based on the size of the hotel.

Six Sigma, which applies training and other tools to improve business processes in order to increase revenue and decrease costs.

Reimbursable Expenses. The Application states that, on an as needed basis, properties pay directly or reimburse Starwood and its affiliates, for specified charges and fees, which may include, without limitation, rooms programs and services, food and beverage programs and services, travel expenses of supervisors, website design and consulting, training courses, brand audits, central accounting, treasury services, property directories and other brand collateral, and payments made to third parties for items such as surveys, employee handbooks and similar publications, property photography, internet booking services, printing and distribution of manuals and similar publications, and the costs incurred by Resort personnel in attending management seminars and conferences organized by the corporate divisions of Starwood and its affiliates.

The Application represents that, in some cases, Centralized Services are provided in exchange for a fee that cannot be affected by Starwood's exercise of discretion. For example, the fee for certain Centralized Services is based on the number of rooms at the Resort. However, there are other Centralized Services with respect to which Starwood or a Related Company receives a fee for providing the service or product that is based on the level of usage by the Resort where Starwood can, through the exercise of its discretion as operator of the Resort, affect the level of usage by the Resort of the product or service. For example, one Centralized Service involves SPG Bonus Points, pursuant to which Starwood, through the General Manager of a particular hotel, can attempt to increase business during slow periods by running a promotion that increases the frequent guest award for stays at that hotel. The cost of the promotion, which is 1.25 cents for each bonus point awarded, is paid to a fund maintained by Starwood and used to pay the cost of the program, which includes the overhead cost.

Another example of this situation involves training courses provided by Starwood on a centralized basis. For example, Starwood offers at the regional level an ''ABCs of Housekeeping'' training course. A fee, based on the cost of the program (including overhead), is paid to Starwood and is based on the number of persons who attend. Since this course is mandatory for all housekeeping staff, Starwood can theoretically affect the level of its fee for this program by hiring more housekeeping staff. There are other training courses, such as arrival training, that are not mandatory for all of the staff of a department. This gives Starwood, through the hotel's General Manager, the discretion as to which hotel employees receive arrival training and, therefore, the level of fees it receives.

10. The Applicant represents that in addition to the Centralized Services involving Starwood and Related Companies, the Resort may also acquire Additional Services (*i.e.*, arrangements for products or services) with entities in which Starwood has made an investment, but which are not controlled by Starwood. These Additional Services are being provided by entities connected to Starwood. One example of the Additional Services is insurance. LaSalle has decided to obtain general liability, automotive liability, employment practices liability insurance, automobile physical damage and umbrella/excess liability coverage through the Starwood Risk Management Program. Starwood provides this coverage to its owned hotels and makes it available to managed hotels on an optional basis for all or only selected coverage. (There is an exception for workers' compensation insurance, which must be provided through Starwood because Starwood is the employer of the employees who operate the Resort.) The Resort will receive first dollar protection (with no deductibles) with respect to this coverage with the exception of automobile physical damage coverage, which has a small deductible, and employment practices liability insurance, which has a $100,000 deductible for the Resort vs. a $250,000 deductible for the policy purchased by Starwood. To fund this coverage, Starwood purchases high deductible insurance and funds projected losses and related administrative costs through its subsidiary Westel Insurance Company, with premiums to Westel allocated to participating hotels on a cost recovery basis. The potential underwriting surplus is retained or the potential deficit is absorbed by Westel. LaSalle believes that the cost of insurance purchased in this manner is more attractive to the Partnership than if it purchased comparable insurance through an unrelated party.

11. The Application notes that another program Starwood typically implements at hotels it manages is the Associate Room Discount Program (ARD Program) that provides discounted room rates and discounted food, beverage and other amenities (to be determined in advance with LaSalle's approval) at participating hotels, including the Resort, for Starwood associates (including employees of Starwood and their immediate families) or associates of participating Starwood franchise hotels worldwide and their immediate families. Starwood associates are all regular full time and part time employees who have been employed by Starwood entities or participating Starwood franchise hotel employers for more than 90 days. The ARD Program is offered to all of the properties that Starwood owns, manages or has an interest in. All hotels owned or managed by Starwood participate in the Associate Room Discount Program. Most hotels franchised by Starwood also participate in the Program.

The Applicant states that under the ARD Program, the Resort's management would have control over the number of rooms rented at the discounted rate on any given night based on occupancy levels at the Resort (and where this would not cause higher rate business to be displaced). The discounted rates under this program fully cover the variable cost to the hotel for the use of the room and the cost to the hotel of the food, beverage and amenities. In return for its participation in this program and its offering discounted rates, the Resort enjoys a substantial benefit in that employees of the Resort are entitled to discount rates at other hotels participating in the program. The Application asserts that this allows the Resort to provide its employees with a valuable employee benefit that is low in cost relative to the value it provides (particularly because it is available only when rooms could not otherwise be sold at a higher rate). In addition, since this arrangement is typically offered by Starwood and all other international branded operators, refraining from offering this benefit to its employees would place the Resort in a distinct hiring disadvantage vis-à-vis other competing hotels. Further, to the extent that an individual taking advantage of the ARD Program spends money on food, beverage and incidentals, he or

she will bring additional revenues to the Resort.

The LaSalle Letter noted that there is not a specific document executed by the Partnership describing the ARD Program that LaSalle, on behalf of the Partnership, has agreed to or signed. However, LaSalle provided to the Department a March 17, 2004 Starwood Corporate/Divisional HR Policies and Procedures document on ''Hot Rates,'' Starwood's Associate Room Discount policy. LaSalle, on behalf of the Partnership, and Starwood entered into the Operating Agreements. In these agreements, Starwood has the authority to determine employment practices, (including wages, hiring, discipline, and discharge), and similarly has the authority to participate in ''Centralized Services,'' or those programs that Starwood performs as Operator at all other hotels managed by Operator. Although LaSalle did not specifically negotiate the terms of the ARD Program, it approved of the participation in the ARD Program as part of a more global approval of the terms on which Starwood was retained. LaSalle elected not to opt out of the ARD Program because it concluded that the program was standard industry practice and that the Resort would enjoy a substantial benefit from the program. In addition, from time to time, LaSalle conducts operational audits, the most recent of which was March 31, 2005, to ensure that Starwood is complying with its procedures.[9] Although the scope of these operational audits varies from audit to audit, a review of Starwood's compliance with the ARD Program has been the subject of some prior audits.

In the LaSalle Letter, LaSalle stated that it would be overly burdensome to cross-reference the very long list of Fund participants, Trustees and contributing employers against the very long list of participants in the ARD Program. However, LaSalle confirms that no participant, Trustee or contributing employer of the Fund could be a participant in the Associate Room Discount Program by virtue of that status. Rather, such an individual would only be a participant in the Program if he or she were an employee of a Starwood entity or a participating franchise hotel (in accordance with the eligibility criteria described above).

12. Section 5.01 of the Operating Agreements requires that: With respect to its decisions concerning the operation of the [Resort], the Operator shall at all times act in good faith and in the best interests of the Owner, using all commercially reasonable efforts to maximize the profits from operation of the [Resort] for [the Partnership], subject to the terms and conditions of this Agreement.

The Applicant represents that consistent with this requirement, Starwood has indicated that as a major owner of hotels, its primary objective in establishing Centralized Services and Additional Services is to deliver value to all hotel properties it represents. LaSalle believes that it is through the aggregation of these properties, the implementation of demonstrated practices and its hospitality industry expertise that Starwood is able to provide services and products that will result in improved operating performance beyond that which can be provided by an operator of a single hotel or smaller group of hotels. LaSalle believes that (a) by centralizing this sourcing function, Starwood is also able to capture economies of scale designed to reduce the cost of the procurement function in the Resort and (b) participation in these programs by the Resort should result in increased efficiencies and lower operating costs.

In this regard, LaSalle states that there is objective industry data indicating that chain hotels are better performers than independent hotels in terms of both average daily rate and occupancy. While there is data comparing chain and independent hotels on an overall performance basis, there are no specific benchmarks that allow for a comparison of specific services. Accordingly, at the time it retained Starwood on behalf of the Partnership, LaSalle considered the generally accepted principle in the hospitality industry that such services can be aggregated and delivered more effectively and efficiently on behalf of a chain of hotels rather than individual hotels. In so doing, it relied on various sources of industry data bearing upon this issue. By way of example, LaSalle provided to the Department an example of one data compilation, prepared by Smith Travel Research, on which LaSalle relied when it decided to retain a chain hotel that provides Centralized Services, rather than an independent hotel that does not. In addition, LaSalle notes that there are several services provided by a chain such as Starwood that could not be easily replicated by an individual property, such as a frequent traveler program, reservation center, and similar services. No benchmark would exist that compares the services of chain and independent hotels in that regard because the independent hotels do not provide the service at all.

LaSalle has concluded that the Centralized Services and Additional Services are likely to result in improved operating performance that is both monetary and non-monetary. Starwood has represented to LaSalle that utilizing these services and products will result in cost savings through aggregation of Starwood's purchasing and organizational power, and, as more fully described below, the Operating Agreements include specific provisions to assure that the Resort will benefit from such arrangements. LaSalle also shares Starwood's belief that value will be achieved through enhancements in quality and service resulting from the economies of scale and joint participation in such arrangements with Starwood's branded hotels. In attempting to select the right supplier for the hotels it operates, Starwood considers a variety of other factors, such as financial, operational (including availability of supplies), health and safety issues, and LaSalle ultimately expects that Starwood's services and purchasing program will maximize the value of the properties.

13. The Application states that as of January 2003, Starwood's portfolio consisted of over 750 properties owned, managed or franchised by Starwood in 80 countries. By aggregating certain service and other activities described above, Starwood believes that it obtains a substantial net cost savings for owners (including itself) of properties it manages. Nevertheless, recognizing the Partnership's unique status as an ERISA plan asset, the Applicant asserts that Starwood has agreed to significant conditions and that the Operating Agreements include stringent limitations on Starwood's ability to enter into transactions and arrangements concerning the Resort. The Application provides the following examples.[10]

(a) Limitations on Transactions and Arrangements

In order to ensure that Starwood treats the Resort at least as well as the other properties it manages (and to make it more likely that the Resort will be operated in accordance with customary industry standards), the Operating Agreements provide that the general operating policies applied to the Resort must (in all material respects) be at prices and on terms and conditions no less favorable to the Resort (in terms of

[9] See 13.(c) below for more information on the latest operational audit conducted by LaSalle.

[10] The Partnership and Starwood have entered into two Operating Agreements, one covering the country club and spa and one covering the hotel and convention center. The Application notes that although it references specific terms and conditions related to the Resort in general, these terms and conditions are included in each of the two Operating Agreements.

increasing gross revenues and decreasing gross operating expenses) than the general operating policies applied by Starwood and/or its affiliates to the other properties managed by Starwood and/or its affiliates. Additionally, Starwood is required by the Operating Agreements to act in the best interests of the Partnership and to use all commercially reasonable efforts to maximize its profits from the Resort.

There are limitations on Starwood's ability to enter into contracts. Specifically, any contracts, leases, licenses and concession agreements (other than collective bargaining agreements or terminable group sales contracts) providing for an aggregate annual expenditure or revenue that exceeds $50,000 for the Resort, or with a term in excess of one year for contracts,

(i) require the Partnership's prior approval (through LaSalle), whether as part of the Annual Operating Plan or otherwise; and

(ii) must be subject to the competitive bidding procedures included in the Operating Agreement. Similarly, any single purchase providing for the purchase of products and services that requires an expenditure that exceeds $50,000 requires the Partnership's prior approval (through LaSalle), whether as part of the annual operating plan or otherwise. Capital expenditures in excess of $25,000 (as adjusted for increases of CPI), or in excess of $100,000 (as adjusted for increases of CPI) in the aggregate in any fiscal year, also require Partnership approval.

There are specific limitations on the fees that may be charged for Centralized Services, which may not be greater than the lowest of: (i) Fees initially agreed upon by the parties in the Operating Agreements (which are the same as those currently offered to other, similar properties that Starwood manages), (ii) Starwood's prevailing fee for such services as offered from time to time, (iii) Starwood's cost, with no profit or mark-up, or (iv) 5% of gross revenues (exclusive of certain occupancy-related charges, such as third-party reservations fees and frequent guest program charges) of the hotel or country club, as applicable.

Centralized Services and Additional Services provided by Starwood affiliates must be provided at prices and on terms and conditions no less favorable to the Resort than the fees and terms and conditions charged or included generally by Starwood (and its affiliates) to other properties Starwood manages. The fees charged to the Resort for Centralized Services can only be modified on a system-wide basis (*i.e.*, not just for the Resort).

The fee for reservations services, which includes participation in Starwood's proprietary reservations network system, is determined according to actual usage of the services and system on a basis no less favorable than that of any other property that is furnished such services and system. The Application notes that, to the extent that usage is determined by individuals unrelated to Starwood or Related Companies, it is likely that the use of this system will not constitute a prohibited transaction in the first instance.

Under section 5.07 of the Operating Agreements, unless the Partnership's prior consent is obtained (as part of the approval of the Annual Operating Plan or otherwise), any transaction for the purchase of products or services from Starwood, its affiliates [11] or any entity in which Starwood or any of its affiliates has any ownership, investment or management interest or responsibility must (i) be on prices and terms better than the prices and terms that could be obtained from third parties for delivery or performance in Hollywood, Florida (for the hotel and convention center) or Hallandale Beach, Florida (for the country club and spa) and (ii) not exceed $50,000. To ensure that this provision is not undermined by suspect bidding practices, the Operating Agreements also provide that Starwood may not solicit bids in a manner that could result in a right of first refusal, or any other bidding advantage, for Starwood or any of its affiliates, as defined in the Operating Agreement.

The Partnership (through LaSalle) has the right to opt out of any Centralized Services and may choose not to participate in the Associate Room Discount Program. As the Additional Services are provided on a case-by-case basis and are subject to the limitations described above, the Partnership may elect not to receive any Additional Services.

(b) Partnership Involvement in the Budgeting Process

The Operating Agreements include detailed and elaborate budgeting and reporting requirements that limit significantly Starwood's discretion with respect to all transactions and purchases, particularly those with or from Starwood and/or its affiliates. Starwood must submit to the Partnership (no later than 90 days before the commencement of each fiscal year) an Annual Operating Plan for the Resort. The Partnership (through LaSalle) has specific line-item approval of the Annual Operating Plan, which includes monthly estimates and covers the operating budget (including departmental revenue and expenses, taxes, insurance and reserves), the capital budget, the marketing plan, the advertising program, working capital requirements, litigation and any other matter reasonably deemed appropriate by the Partnership.

Starwood is required to work within the approved Annual Operating Plan, with very strict parameters for permitted variation. During any year, Starwood may not, without the Partnership's prior approval (through LaSalle), and subject to certain variable or ''uncontrollable'' expenses (which are defined in the Operating Agreements and include such items as real estate taxes and the like), (i) incur any cost or expense that would cause total expenditures for any line item to exceed the budgeted expense for that line item by more than 10%, (ii) incur any cost or expense that would cause total expenditures for any department to exceed the budgeted expenses for that department by more than 5%, or (iii) incur any cost or expense that would cause total operating or capital expenditures to exceed the budget by more than 2%. Other than for emergency reasons, Starwood may not exceed the budgeted amount for capital expenditures.

(c) Reporting and Disclosure Obligations

The Applicant asserts that the Operating Agreements allow the Partnership and LaSalle to monitor Starwood's compliance with the budget and all major expenditures and transactions. The Partnership, through LaSalle, controls all bank accounts, and has signatories on the operating accounts that Starwood will use to manage the Resort. Upon the occurrence of an Event of Default (as described below), the Partnership may freeze these accounts and prevent Starwood from making any additional payments.

The Operating Agreements also provide that representatives of Starwood and the Partnership (through LaSalle) must meet no less frequently than monthly, for the purposes of (i) reviewing each annual operating plan; (ii) analyzing Starwood's actual performance against the annual operating plan; (iii) reviewing and updating rolling revenue disbursements and three-month forecasts for the Resort; and (iv) analyzing Starwood's actual

[11] Section 1.01 of the Operating Agreement defines an ''Affiliate'' of Starwood as ''any [other] person or entity directly or indirectly controlling, or controlled by, or under common control with [Starwood].''

performance against the performance of an applicable competitive set of resorts.

Under Article 11 of the Operating Agreements, LaSalle, on behalf of the Partnership, has the right to conduct audits with respect to the Resort. The Partnership receives interim (delivered within 20 days after the end of each fiscal month) and annual (audited, and delivered within 90 days after the end of each fiscal year) accounting reports, which include a comparison of actual to budgeted expenses. The Partnership, through LaSalle, has the right to have these reports audited by an independent accounting firm. If any discrepancy is discovered with respect to payments to Starwood or any of its affiliates, including in the payment of fees for Centralized Services or reimbursement of expenses, the Operating Agreements provide for adjustment within 10 days following notice thereof. In addition, if the audit discloses weaknesses or the need for changes in internal control systems pertaining to safeguarding the Partnership's assets, Starwood is required to make the necessary changes.

By letter dated July 13, 2006 from LaSalle to the Department, La Salle provided that the last operational audit was completed on March 31, 2005 and was conducted by a third party, Gallogly, Fernandez & Riley, LLP, a prominent local accounting firm. A written report was provided to LaSalle and found no breaches of the Operating Agreements. The scope of the audit was to review areas such as the calculation and payment of management fees, allocation of salaries and wages, return of vendor rebates, use of complimentary rooms and other similar areas which are prone to miscalculations, inaccuracies or abuse. Additionally, LaSalle represented that they are not aware of any areas in which Starwood has exceeded its authority under the Operating Agreements and that LaSalle has not asked Starwood to discontinue providing any of the Centralized Services that Starwood provides under the Operating Agreements. LaSalle noted that it did instruct Starwood not to participate in the Starwood program for Worker's Compensation and elected to obtain coverage through a third-party.

(d) Recourse for Breach

As described above, the Partnership, acting through LaSalle, exercises a significant level of oversight through the budgeting, reporting, monitoring and audit process, which will facilitate LaSalle's ability to detect and rectify any violation of the restrictions discussed above. If Starwood breaches its obligations under the Agreement, there are readily exercisable avenues of recourse for the Partnership.

For example, upon the occurrence of an ''Event of Default,'' (which includes breaches of material covenants, undertakings, obligations or conditions (which are not cured within 30 days), the Partnership may terminate the Operating Agreements (or the relevant one) and pursue any other remedies available to it in law and in equity, other than those specifically excluded in the applicable Operating Agreement. Furthermore, as the funding of the operations of the Resort is primarily done through the Partnership's agency and reserve accounts, upon the occurrence of an Event of Default, the Partnership may freeze these accounts and prevent Starwood from making any additional payments.

Additionally, the nature of the relationship between Starwood and the Partnership is one of fiduciary and agency. Accordingly, if, for any reason, the Partnership determines that Starwood is putting its assets at risk, the Partnership could protect itself by terminating the agency and demanding possession of the Resort.[12]

The Partnership is also entitled to indemnification with respect to any claims, demands, actions, penalties, suits and liabilities arising from Starwood's breach of fiduciary duty, violation of ERISA or breach of or default on the Operating Agreements.

14. LaSalle, after consulting with JLL Hotels (its hotel advisory firm) and following substantial review, determined that:

(a) The provision of Centralized Services and the Additional Services is a critical component of management by a major third-party branded operator in order to allow the managed property to realize the benefits of retention of such an operator;

(b) Given their existing infrastructure and agreements, neither Starwood nor any major competitive national or international third-party operator could, as a practical contractual matter, provide these types of services and products on an effective basis without these sorts of arrangements;

(c) The effect of aggregation in a multi-property system (e.g., enhanced by the buying power of over 750 hotels) and the affiliate relationships inherent in these arrangements are both reasonable and customary and, in light of the effect on costs and revenues, beneficial to the Partnership, as owner of the Resort;

(d) The Partnership will be able to monitor these arrangements in an effective manner through the significant and ongoing controls available to it under the Operating Agreements (to be exercised by LaSalle); to the extent it determines that it is advisable to do so, it can opt out and/or discontinue some or all of these arrangements;

(e) As noted above, in connection with the operator selection process, LaSalle reviewed in detail the Centralized Services offered by Starwood and concluded that the overall cost of services and products offered by Starwood on a centralized basis was consistent with the amounts charged by other potential international branded operators; and

(f) Delivery of services and products such as the Centralized Services and Additional Services and participation in programs such as the Associate Room Discount Program is customary in the hotel industry, and comparable operators, such as Hilton, Marriott International and Hyatt, have similar policies and processes.

Based on these determinations, LaSalle concluded that it would be appropriate to submit an application to the Department for the reasons set forth below.

15. As noted above, the transactions undertaken by Starwood are subject to the authority and general direction of LaSalle. Pursuant to the IFS Agreement, IFS is the independent named fiduciary with respect to the Diplomat Account. IFS retained LaSalle to serve as investment manager and QPAM with respect to the Resort pursuant to the QPAM Agreement, which provides that IFS retains significant oversight responsibilities with respect to LaSalle's performance hereunder. Starwood, as property manager for the Resort, is acting under the authority and general direction of LaSalle pursuant to the Operating Agreements. As discussed above, the Operating Agreements contain both significant limitations on the ability of Starwood to exercise discretion and significant oversight of Starwood by LaSalle.

(a) Centralized Services and Additional Services

(1) Self-Dealing Transactions

Because of the additional fees that could be earned by Starwood or a Related Company as a result of management decisions by Starwood,

[12] The Application provides that such an action could subject the Partnership to damages if, for example, the termination were a breach of contract. However, there is an extra layer of protection afforded the Partnership because it would have the right to remove Starwood from the Resort during the pendency of any dispute, assuring the Partnership that if such a dispute were to arise, it could conduct the litigation after Starwood left the property.

Starwood could be viewed as having an interest that might affect its judgment in violation of section 406(b) of ERISA. Accordingly, Starwood seeks relief to the extent that either (i) the Related Company is a Starwood ERISA Affiliate or (ii) Starwood has an interest in the Related Company that could arguably affect its judgment in operating the assets of the Partnership.

(2) Party-In-Interest Transactions Involving Non-Incidental Goods

Starwood's corporate and operating structure as well as its contractual obligations result in arrangements pursuant to which Starwood (or Starwood ERISA Affiliates) would be providing services and/or selling products to the Partnership. Any furnishing of services or products to the Fund by, or transfer of Fund assets to, Starwood or Starwood ERISA Affiliates could constitute a prohibited transaction in violation of ERISA and the Code, absent the applicability of a specific exemption.[13]

Notwithstanding the foregoing, the Application asserts that most such transactions will not constitute prohibited transactions (and relief is not sought with respect thereto) because specific exemptions will apply in most cases. To the extent that Centralized Services and Additional Services consist of services (as opposed to goods that are not incidental to such services), section 408(b)(2) of ERISA would exempt these services from the prohibited transaction rules because the services are ''reasonable arrangements'' under which Starwood (or an entity related to Starwood) provides ''services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor[e].'' The Department notes, however, that section 408(b)(2) of the Act provides no relief from violations of section 406(b) of ERISA that may arise in connection with any provision of services.

The Application states that section 408(b)(2) of ERISA does not provide an exemption with respect to goods that are not incidental to the furnishing of necessary services described in the preceding paragraph. PTE 84–14 would generally provide relief for transactions where a QPAM, e.g., LaSalle, or a property manager acting under its authority and general direction, approves a particular transaction. However, the Application notes that PTE 84–14 generally does not provide relief from violations of section 406(b) of ERISA. Accordingly, to the extent that the property manager has limited discretionary authority to affect the amount of non-incidental goods purchased by the Partnership, the Application states that this could constitute a prohibited transaction that is not exempted by either PTE 84–14 or section 408(b)(2) of ERISA. Relief is, therefore, being sought for such transactions.

(b) Associate Room Discount Program

As a participant in the Associate Room Discount Program, the Resort provides Starwood associates, including its employees and employees of certain Starwood ERISA Affiliates, or associates of participating Starwood franchise hotels with discounted room rates and discounted food, beverage and other amenities, subject to various limitations.

Under section 3(14) of ERISA, the term ''party in interest'' includes employees of Starwood, an entity providing services to the Fund, and certain Starwood ERISA Affiliates, as well as certain other individuals (such as family members of parties in interest). In addition, by offering these discounts to its associates, Starwood could be viewed as dealing with the assets of the Fund in its own interest or acting on behalf of the associates, who could be viewed as parties with interests adverse to those of the Fund. Accordingly, the provision of discounts to employees of Starwood or Starwood ERISA Affiliates and their families could constitute a prohibited transaction in violation of ERISA, absent the applicability of a specific exemption.[14]

16. LaSalle believes that Starwood's ability to provide (by itself or via Related Companies) the Centralized Services and Additional Services provides significant operational and economic benefits to the Partnership and, therefore, the Fund. LaSalle has concluded that the provision of these sorts of services is a critical component of management by a major third-party branded operator. After careful consideration and full analysis during the operator selection process (as described above), LaSalle concluded that the retention of a major international branded hotel operator was in the best interests of the Partnership because it would, among other things, increase the gross revenues and/or decrease certain expenses generated by the Resort, as well as permit the Partnership to obtain any necessary financing on more desirable terms than may otherwise be available to the Partnership. Services, such as the Starwood proprietary group sales and global reservations system, should provide the Resort with greater occupancy and revenues than could be obtained without engaging such a brand and operator.

LaSalle asserts that the conflicts of interest that arise due to the fact that these services are provided by Starwood or a Related Company can be mitigated, if not eliminated, by (i) restrictions in the Operating Agreements relating to the amount and nature of charges for such services and products and the requirement that such arrangements be beneficial to the Partnership, such as those discussed above; (ii) the ability of the Partnership to review the effect of these transactions through its review of its financial information; and (iii) the Partnership's ability to opt out or discontinue some or all of these services or products.

While the Partnership is entitled not to participate in certain Centralized Services or Additional Services and obtain the products and services on its own, overall these arrangements provide precisely the types of advantages that the Partnership (and LaSalle) intended to obtain by engaging a major international branded hotel operator to manage the Resort. For its part, Starwood has contractual arrangements in place with some Related Companies and other entities that require that Starwood utilize these entities in providing products and/or services, or that require a specific manner of obtaining services or products through these entities for its own properties.

Based on information obtained during the process of selecting a brand and an operator for the Resort, as well as the experience of JLL Hotels, LaSalle believes these sorts of arrangements are customary in (and endemic to) the hotel

[13] The Application notes that the provision of Additional Services is often by Related Companies in which Starwood owns less than 10% of the total outstanding equity. LaSalle believes that in cases in which Additional Services are provided by Related Companies that are not Starwood ERISA Affiliates, the provision of Additional Services would not constitute a prohibited transaction under section 406(a) of ERISA because these entities in which Starwood has made an investment are not parties in interest or disqualified persons. Accordingly, relief is not sought in that circumstance. The Department expresses no views as to whether selection of these entities by Starwood would raise any issues under section 406(b) of ERISA.

[14] The Application notes that Part IV of PTE 84–14 (regarding Transactions Involving Places of Public Accommodation) would not provide an exemption for the Associate Room Discount Program because the rooms, food, beverage and other amenities are not furnished on a comparable basis to the general public. However, the rooms are not made available under the Associate Room Discount Program if they could otherwise be sold to the public at a higher rate. In addition, in each case, the discounted rates fully cover the variable cost to the hotel for the use of the room and the cost to the hotel of the food, beverage and amenities.

industry, and that each of the other candidates for operator—including the other finalist candidates (*i.e.*, Hyatt and Marriott) have the same or similar arrangements. Therefore, it is extremely unlikely that the Partnership would be able to continue to retain a major hotel operator that would not have similar arrangements.[15] LaSalle believes that, if the Partnership were forced to opt out of these arrangements, it would lose important benefits of being part of a major national branded operation (which, in LaSalle's considered view, would likely substantially reduce the profitability of the Resort and its value as an investment of the Fund).

In addition, as discussed above, the Operating Agreements provide significant limitations on Starwood's use of affiliated entities. If products or services are provided to or performed by Starwood affiliates, as defined in the Operating Agreements, they must be (unless approved by the Partnership, through LaSalle), in the aggregate, on terms and prices lower (or at least as favorable) than those that could be obtained from unaffiliated parties in the relevant market. The fee for a significant number of these services or products (whether performed by affiliates or non-affiliates) may not exceed ''the cost incurred by [Starwood or its affiliates] * * * with no profit or mark-up.'' Specific approval by LaSalle is required for agreements or purchases that are in excess of $50,000, or with a term in excess of one year for agreements, whether they are made with affiliates or with unrelated third parties.

With respect to the Associate Room Discount Program, the Applicant notes that the Resort's participation enables the Resort to offer its employees discount rates at other hotels participating in the program. Although this provides employees with a valuable benefit that attracts high-level candidates, it is relatively low in cost to provide (particularly because it is available only when rooms would otherwise remain vacant and would not generate revenue). In addition, since this arrangement is typically offered by Starwood and all other international branded operators, refraining from offering this benefit to its employees would place the Resort in a distinct hiring disadvantage vis-a-vis other competing hotels.

The Application states that the percentage of the Fund's assets involved in the provision of any service or the sale of any products by Starwood or a Related Company or with respect to the Associate Room Discount Program is not currently determinable. However, as discussed in greater detail above, the Operating Agreements include various protections against the use of significant assets in these transactions without the Partnership's approval. These include, by way of example, budgeting requirements, prohibitions on incurring costs significantly in excess of budget, specific limitations on the costs of Centralized Services, and requirements for Partnership approval of significant expenses and contractual undertakings.

Accordingly, through written, enforceable assurances from Starwood in its agreements with the Partnership, LaSalle believes it has adequately provided for the Partnership's ability to profit from these arrangements and to control any abuse of authority or potential breach of duties by Starwood; but relief is sought in light of the concern that such transactions would otherwise be viewed as prohibited transactions.

17. The Applicant asserts that the Partnership, the Fund and the Fund's participants and beneficiaries would suffer hardship and substantial economic loss if this Application were denied because the prohibited transaction rules of ERISA and the Code would not permit Starwood (or Related Companies) to provide certain Centralized Services and Additional Services and to participate in the Associate Discount Room Program. If this Application were to be denied, the Partnership may have to opt out of all of these arrangements and obtain the products and/or services on its own, likely on less favorable terms, or LaSalle will need to be intimately involved in managing, negotiating and approving each and every transaction involving the purchase of products and/or services, which would be very costly and highly impractical and negate much of the benefit to be derived from the Operating Agreements with Starwood and from engaging a major international branded hotel operating company. The Applicant states that the arrangements for Centralized Services and Additional Services, as described above, provide precisely the types of advantages that the Partnership (and LaSalle) intended to obtain by engaging a major international branded hotel operator to manage the Resort, such as increased operating revenues and economies of scale designed to reduce procurement costs. Additionally, LaSalle (and its and IFS's hotel advisors) has concluded that, given the size and location of the Resort, the utilization of the Centralized Services and Additional Services (such as a strong marketing program, groups sales network and reservation system) is absolutely essential to achieve acceptable occupancy rates, and to ensure that the Fund's investment is managed in a profitable and professional manner. Thus, the Fund would suffer significant economic loss and substantial hardship if, as a result of its inability to enter into transactions that are otherwise standard in the hotel industry, it was unable to retain (or optimally utilize the resources of) a major branded operating company with significant internal infrastructure and marketing resources. LaSalle is also of the opinion that maintaining an international branded operator enhances the ability of the Fund to obtain financing for the Resort, should this be needed in the future.

18. The Application requests that the exemption be made applicable as of June 5, 2001, the execution date of the Operating Agreements. The circumstances surrounding the transactions are that the Fund and LaSalle believe that these products and/or services are essential for effective management of the Resort and in the interest of the Fund and its participants. If it had not engaged in these transactions, the Fund would not have been able to realize the critical benefits of retaining a third-party operator.

19. The Applicant represents that an exemption would be administratively feasible for the Fund because it would allow Starwood to operate the Resort in accordance with its industry accepted, standard procedures. In contrast, if the exemption were not granted, at the present time, the Partnership would incur significant administrative and operating costs in purchasing and obtaining the services and/or products (that would otherwise be provided by Starwood or its affiliates) by itself, or, possibly, reviewing its rights with respect to terminating the Operating Agreements (and possibly searching for a smaller, less qualified operator). The Fund believes that an exemption would be administratively feasible for the Department because it does not add any additional material burden to the Department's already significant ongoing oversight of the Diplomat Account.

[15] The Application notes that even if the Partnership were able to negotiate a different agreement with an alternative branded operator, it would incur the significant expense of negotiating another complicated operating agreement with the newly selected operator, whom both IFS and LaSalle believe would not be more qualified than Starwood to operate the Resort. Additionally, the Operating Agreements provide terms and conditions that are extremely favorable to the Partnership. There is a significant risk that an Operating Agreement with another entity would contain significantly less favorable terms and conditions.

The Applicant asserts that the proposed exemption would be protective of the rights of participants and beneficiaries of the Fund because the Operating Agreements contain (a) substantial limitations on Starwood's ability to provide services or sell products directly or through its affiliates and Related Companies;[16] (b) provisions for significant involvement by the Partnership (generally, through LaSalle) in the budgetary process; (c) provisions for significant after the fact reporting and disclosure to the Partnership on these types of transactions; and (d) provisions for correction in the event that an audit uncovers a discrepancy related to any payments to Starwood or its affiliates or a weakness in internal control systems. The Application states that these protections, some of which are general, some of which are specific to affiliate transactions and some of which are triggered by expenditures in excess of a certain amount, significantly reduce the probability of an abuse of authority or conflict of interest that results in harm to participants and beneficiaries. The Application provides that, furthermore, each of these protections will be periodically monitored and scrutinized by LaSalle, who can cause the Partnership to cease to participate in most if not all of the transactions discussed herein.

20. By letter dated April 25, 2006, LaSalle advised the Department that, in connection with an internal restructuring of Starwood Hotels & Resorts Worldwide, Inc., effective as of January 12, 2006, Westin Management Company East assigned its interest in the Operating Agreements to Westin Hotel Management, L.P., a wholly-owned subsidiary of Starwood Hotels & Resorts Worldwide, Inc. References in the Application to Westin Management Company East should therefore be read to include Westin Hotel Management, L.P. Additionally, as of April 30, 2006, LaSalle was replaced by Capital Hotel Management, LLC (CHM) as the qualified professional asset manager for the Fund.

21. In the CHM Letter, CHM confirms that, pursuant to the Discretionary Investment Management Agreement by and among Diplomat Properties, L.P., Independent Fiduciary Services, Inc., on behalf of the Plumbers & Pipefitters National Pension Fund, and Capital Hotel Management, LLC dated February 27, 2006 (CHM Agreement), CHM has been appointed as the successor investment manager and QPAM with respect to the Resort. CHM has also replaced LaSalle as a non-member manager of DPLLC. CHM represents that it is an SEC registered investment advisor, which serves as a QPAM and one of the largest independent hotel asset and investment management companies operating in the U.S. today. CHM is a privately-held hotel investment management company, providing a full-range of acquisition and disposition expertise for its investors, as well as customized strategies proven to maximize asset/portfolio value and increase overall hotel investment returns. CHM has under management a hotel portfolio representing more than 14,000 rooms, collectively valued at more than $5.2 billion. Hotel investments are comprised of urban landmark properties, high-profile destination resorts and convention center hotels operating in major markets across the U.S. and the Caribbean.

CHM provides that, since its appointment as QPAM for the Fund, it has become integrally involved in all aspects of the Diplomat Account, and has made all of the business, operational and fiduciary decisions for the Diplomat Account, pursuant to the CHM Agreement (subject to the oversight or approval of IFS, as appropriate). CHM confirms that it is responsible for monitoring the performance of Westin Hotel Management, L.P. under the terms of the Operating Agreements, including the ongoing tasks described in the Application. CHM states that, for example, CHM is responsible for performing the actions ascribed to the QPAM as they relate to the general limitations on Starwood's activities described in this proposed exemption at 13. above, including with respect to (i) line-item approval of the Resort's Annual Operating Plan; (ii) approval of costs, expenses and expenditures; (iii) audits related to the Resort; and (iv) control of bank accounts. Similarly, CHM is responsible for performing the actions ascribed to the QPAM as they relate to the specific limitations on Starwood's activities including with respect to (i) the approval of certain purchases of products and services by Starwood from itself or its affiliates; (ii) the approval of certain contracts with an aggregate annual expenditure or revenue of more than $50,000 or having a term of more than one year, as well as certain capital expenditures; and (iii) the right to opt out of any Centralized Services and to elect not to receive any Additional Services. Further, as described in this proposed exemption at 9. above, changes to services and products or fees (as limited by the Operating Agreements) will be presented to and approved, if applicable, by CHM in connection with the annual budget process. Therefore, on and after April 30, 2006, references in the Application to LaSalle should, therefore, be deemed to refer to CHM.

22. In determining to propose exemptive relief for the transactions involving the provision of services by Starwood and Related Companies, the Department placed a great deal of emphasis on the significant involvement of IFS, as named fiduciary, and LaSalle and CHM, as investment managers (the Independent Fiduciaries) and their considered and objective evaluation of the subject transactions. These Independent Fiduciaries have represented for the record that the retention of Starwood was in the interests of the Partnership and that the written agreement and the limitations contained therein permit the Independent Fiduciaries to effectively monitor and scrutinize the actions undertaken by Starwood. The initial and continued involvement of the Independent Fiduciaries on behalf of the Fund with respect to the transactions that are the subject of this proposed exemption is a critical factor in the Department's determination to propose exemptive relief. In addition, as the Department has previously stated in PTE 2001–39, the fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. IFS' appointment of an investment manager and QPAM to manage the Diplomat Account and its ongoing determination to continue to retain LaSalle and CHM with respect to the management of the Diplomat Account are subject to section 404 of the Act. Both LaSalle and CHM, as investment managers for the Diplomat Account, retain fiduciary responsibility for the activities undertaken by Starwood on behalf of the Resort. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that a fiduciary discharge his duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and in a

[16] The Application notes that the Operating Agreements provide that, if services are performed by Starwood affiliates in lieu of Starwood, the affiliates are not entitled to be paid more than Starwood would have been paid. Additionally, if goods or services are provided or performed by affiliates, such goods or services will be provided on terms and at prices: (i) better than (or, with the Partnership's approval, at least as favorable to the Resort as) what is available in the relevant market; and (ii) consistent with terms made available to other similar properties operated by Starwood and its affiliates.

prudent manner. Accordingly, it is the responsibility of the Fund's fiduciaries to operate the Resort in a manner designed to maximize the Fund's rate of return, consistent with their fiduciary duties under section 404 of the Act. The fiduciary obligation to act prudently requires, at a minimum, that the Independent fiduciaries conduct an ongoing objective, thorough and analytical critique of the management of the Diplomat Account. If the transactions that are the subject of this proposed exemption result in activity that is not ''prudent,'' and not ''solely in the interest'' of the participants and beneficiaries of the Fund, the responsible fiduciaries of the Fund would be liable for any losses resulting from such a breach of fiduciary responsibility, even if the transactions involved do not constitute prohibited transactions under section 406 of ERISA.

Notice to Interested Persons

The notice to interested persons, along with the supplemental statement required by Department Regulation 2570.43(b)(2), will be given to each member of the Board and to anyone who commented with respect to PTE 99–46, PTE Application D–10960 or D–10971.

Notice will be provided by way of first class mail. The Application states that the Fund will notify interested persons within 15 days following publication by the Department of a notice of the Proposed Exemption in the **Federal Register**. It is intended, therefore, that there will be a 45-day period available for notice and comment (i.e., 15 days for notice and 30 days for comment).

FOR FURTHER INFORMATION CONTACT: Wendy McCollough of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Mellon Financial Corporation (Mellon) Located in Pittsburgh, PA

[Application No. D–11342]

Proposed Exemption

Section I—Exemption for In-Kind Redemption of Assets

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions in sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 30, 2005, to certain in-kind redemptions (the Redemption(s)) by the Mellon 401(k) Retirement Savings Plan or by any other employee benefit plan sponsored by Mellon or an affiliate (the Plan(s)), of shares (the Shares) of certain proprietary mutual funds in which the Plans were invested as of November 30, 2005 (the Funds), for which Mellon or an affiliate (collectively, referred to also as Mellon) provides investment advisory and other services, provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption—other than customary transfer charges paid to parties other than Mellon;

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities, as such term is defined in Section II, below. Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares, and accruals on such securities may be distributed in cash;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities of the Funds equal in value to that of the number of Shares redeemed, as determined in a single valuation (using sources independent of Mellon) performed in the same manner and as of the close of business on the same day, in accordance with the procedures established by the Fund pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), and the then-existing procedures established by the board of the Funds that are in compliance with the rules administered by the Securities Exchange Commission (SEC);

(D) Mellon does not receive any direct or indirect compensation or any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, Mellon provides in writing to an independent fiduciary (Independent Fiduciary, as such term is defined in Section II, below), a full and detailed written disclosure of information regarding the Redemption;

(F) The Independent Fiduciary provides written authorization in advance of the Redemption to Mellon, such authorization being terminable at any time prior to the date of the Redemption without penalty to the Plan, provided that the termination is effectuated by the close of business following the date of receipt by Mellon of written or electronic notice regarding such termination (unless circumstances beyond the control of Mellon delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Funds to the Independent Fiduciary and discussions with appropriate operational personnel of the Plan, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Mellon makes a ''make-whole payment'' to ensure that the dollar value of the interests received by the Plan from the collective investment funds is not diminished by transaction costs nor by valuation differences as a result of the Redemption;

(I) No later than thirty (30) business days after the completion of a Redemption, Mellon or the relevant Funds provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption and the related per Share net asset value and the total dollar value of the Shares held;

(ii) The identity and related aggregate dollar value of each security provided to the Plan pursuant to the Redemption, including each security valued (using sources independent of Mellon) in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the board of the Fund for obtaining current prices from independent pricing services or market-makers;

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(J) The value of the securities and cash received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the relevant Fund at that time;

(K) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption

deemed in its judgment to be representative, including pricing;

(L) Each of the Plan's dealings with the Funds, Mellon, the principal underwriter for the Funds, or any affiliate thereof, are on a basis no less favorable to the Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(M) Mellon maintains, or causes to be maintained, for a period of six years from the date of any covered transaction, such records as are necessary to enable the persons described in paragraph (N)(1)(i)–(v), below, to determine whether the conditions described in this Section I have been met, except that—

(i) if the records necessary to enable the persons described in paragraph (N)(1)(i)–(v), below, to determine whether the conditions of this exemption, if granted, have been met are lost, or destroyed, due to circumstances beyond the control of Mellon, then no prohibited transaction will be considered to have occurred, solely on the basis of the unavailability of those records; and

(ii) no party in interest with respect to the Plan other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (N) below.

(N)(1) Except as provided in subparagraph (2) of this paragraph (N), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (M), above, are unconditionally available at their customary locations for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC,

(ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary,

(iii) any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary,

(iv) any employer whose employees are covered by the Plan, and

(v) any employee organization whose members are covered by such Plan;

(2) None of the persons described in paragraphs (N)(1)(ii) through (v) shall be authorized to examine trade secrets of Mellon or the Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Mellon or the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (N)(2) above, Mellon or the Funds shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(A) The term ''affiliate'' means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is:

(i) Independent of and unrelated to Mellon and its affiliates, and

(ii) Appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Funds to, or for the benefit of, the Plan. A fiduciary will not be independent of, and unrelated to, Mellon if:

(i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with, Mellon;

(ii) Such fiduciary, directly or indirectly, receives any compensation or other consideration in connection with any transaction described herein (except that an Independent Fiduciary may receive compensation from Mellon in connection with the transactions contemplated herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by any decision made by the Independent Fiduciary); or

(iii) More than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Mellon and its affiliates in the fiduciary's current tax year.

(E) The term ''Transferable Securities'' means securities—

(1) for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and

(2) That are not:

(i) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933;

(ii) Securities issued by entities in countries that (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(iii) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can be traded only with the counter-party to the transaction to effect a change in beneficial ownership;

(iv) Cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements);

(v) Other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(vi) Securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer.

(F) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family,'' as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Summary of Facts and Representations

1. Mellon is a global financial services company headquartered in Pittsburgh, Pennsylvania, with approximately $4.5 trillion in assets under management, administration, or custody, including approximately $766 billion under management, as of September 30, 2005. Mellon is regulated as a bank holding company and a financial holding company under the Bank Holding Company Act of 1956, as amended by the Gramm-Leach-Bliley Act, and subject to the supervision of the Board of Governors of the Federal Reserve System.

The Mellon 401(k) Retirement Savings Plan (*i.e.,* the Plan) is a defined

contribution plan maintained by Mellon to provide retirement benefits to eligible employees of Mellon and its subsidiaries and is intended to satisfy the qualification requirements of section 401(a) of the Code. The Plan accepts contributions attributable to ''cash or deferred arrangements'' described in Code section 401(k) (Pre-Tax Contributions), and Mellon makes matching contributions on those Pre-Tax Contributions. Mellon Bank, N.A., a subsidiary of Mellon, serves as Trustee of the Plan. Investments under the Plan are directed by the Plan participants.

2. The applicant represents that the selection and monitoring of the Plan's investment options are overseen by Mellon's Benefits Investment Committee (the BIC), the Plan's named fiduciary for investment purposes and whose members are Mellon corporate officers. Until November 30, 2005, the Plan made available three categories of investment options to Plan participants. The first category, the ''Basic Funds,'' consisted of six Mellon Bank, N.A. collective investment funds and Mellon common stock. The second category, the ''Actively Managed Funds,'' consisted of 14 proprietary mutual funds (*i.e.,* the Funds)[17] and the Mellon Stable Value Fund, a Mellon Bank, N.A. collective investment fund. The third category was a self-directed brokerage window that provided access to more than 7,000 mutual funds.

Thirteen of the proprietary Funds are managed by the following subsidiaries of Mellon: (i) The Dreyfus Corporation (Dreyfus), which is headquartered in New York, New York and serves as the investment adviser to the Dreyfus family of mutual funds; and (ii) Founders Asset Management LLC (Founders), an indirect, wholly-owned subsidiary of Dreyfus that is headquartered in Denver, Colorado, and serves as the investment adviser to the Dreyfus Founders mutual funds (the Dreyfus family of mutual funds and the Dreyfus Founders mutual funds are hereinafter collectively referred to as the Dreyfus Funds). The distributor, transfer agent, and custodian of the Dreyfus Funds relevant to this application are also affiliates of Mellon. As of September 30, 2005, the Dreyfus Funds included more than 200 mutual fund portfolios holding approximately $172 billion. The Plan was invested in 13 of the Dreyfus Funds, as described above. The fourteenth proprietary Fund also has an adviser affiliated with Mellon.

As of September 30, 2005, the assets held in trust under the Plan were valued at $1,380,761,939.46 and were allocated among the following investment options in the following amounts:

Basic Funds:	
Daily Liquidity Money Market	$89,949,424.10
Daily Liquidity Asset Allocation	18,537,191.45
Daily Liquidity Stock Index	234,057,799.50
Daily Liquidity Small Cap Stock Index	7,354,298.25
Daily Liquidity International Stock Index	22,742,989.30
Daily Liquidity Aggregate Bond Index	50,485,047.00
Mellon Stock	409,606,522.50
Actively Managed Funds:	
Mellon Stable Value Dreyfus LifeTime Portfolios	92,584,517.21
Income Portfolio	6,954,841.82
Growth and Income Portfolio	61,604,892.28
Growth Portfolio	30,662,384.91
Dreyfus Appreciation	4,005,837.40
Dreyfus Premier Core Value	39,396,197.50
Dreyfus Disciplined Stock	113,489,817.05
Dreyfus Premier Third Century	4,255,733.72
Dreyfus Premier Technology Growth	12,967,651.48
Dreyfus Founders Growth	9,086,042.62
Dreyfus Premier New Leaders	5,982,309.07
Dreyfus Founders Discovery	52,011,463.46
Dreyfus Founders Worldwide Growth	24,425,613.04
Dreyfus Premier International Value	24,027,831.95
The Boston Company International Small Cap	25,566,295.14
Self Directed Account	18,287,358.28
Participant Loan Fund	22,719,880.43
Total	1,380,761,939.46

3. The applicant represents that the BIC made a decision to simplify the Plan's investment offerings for the benefit of Plan participants; it decided to make available only the Basic Funds as ''core'' options, *i.e.*, as funds in which Pre-Tax Contributions and Mellon matching contributions can be directly invested. The result was to eliminate the Actively Managed Funds from the ''core'' Plan investment line-up. The Mellon Stable Value Fund was moved to the Basic Funds category, and the other 14 Actively Managed Funds continue to be available only through the self-directed brokerage window. In addition to simplifying the investment offerings, the change also has had the advantage of reducing the investment management expenses borne by the Plan and Plan participants, as Mellon absorbs all of the investment management costs for the collective investment funds that comprise the Basic Funds but did not do so for the mutual funds in the Actively Managed Funds category. The BIC believes that being able to offer a streamlined menu of no-cost options to Plan participants represents a tremendous advantage over the long term and is in the best interests of Plan participants.

[17] The applicant represents that the Plan was invested in the Funds pursuant to the terms and conditions of Prohibited Transaction Exemption (PTE) 77–3. PTE 77–3 (42 Fed. Reg. 18734, April 8, 1977) is a class exemption that permits, under certain conditions, the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter. Thus, the applicant is not requesting exemptive relief with respect to the Plan's past investment in the Funds. The Department expresses no opinion herein as to whether the terms and conditions of PTE 77–3 were satisfied.

The change was adopted by the BIC on May 20th, to be effective no later than December 31, 2005. After taking into account the administrative, recordkeeping, and communication issues related to a transaction of this size, as well as the availability of the internal and external resources necessary to effect the implementation, the BIC decided to implement the changes effective December 1, 2005. The Plan participants were notified of the upcoming changes and advised to review their investment elections. An announcement entitled ''Important Changes to the Investment Funds in the Mellon 401(k) Retirement Savings Plan,'' dated October 2005, was distributed on or about October 3, 2005.

On the effective date of the transfer, the Actively Managed Fund assets were transferred to the following Mellon collective investment funds included within the Basic Funds:

FUND TRANSFER OR ''MAPPING'' CHART

Actively managed fund	► Recipient basic fund
Dreyfus LifeTime Portfolios, Inc	► Daily Liquidity Asset Allocation Fund.
Income Portfolio.	
Growth and Income Portfolio.	
Growth Portfolio.	
Dreyfus Appreciation.	
Dreyfus Premier Core Value.	
Dreyfus Disciplined Stock	► Daily Liquidity Stock Index.
Dreyfus Premier Third Century Fund, Inc.	
Dreyfus Premier Technology Growth.	
Dreyfus Founders Growth.	
Dreyfus Premier New Leaders.	
Dreyfus Founders Discovery	► Daily Liquidity Small Cap Stock Index.
Dreyfus Founders Worldwide Growth	► Daily Liquidity International Stock Index.
Dreyfus Premier International Value.	
The Boston Company International Small Cap.	

4. According to the applicant, the BIC requested that the Plan receive these redemptions in cash from all of the Funds. However, the Funds have reserved in their prospectuses the authority to ''redeem in kind,'' or make payments in securities rather than cash, if the amount to be redeemed is large enough to affect Fund operations—for example, if it exceeds 1% of fund assets.

In October, the Dreyfus Disciplined Stock Fund (the Stock Fund) and the Dreyfus Founders Worldwide Growth Fund (the Growth Fund)—of which the Plan holds approximately 10% and 30% of Fund shares, respectively—advised the BIC that they would be requiring that the redemptions from those Funds be taken in the form of securities rather than cash (i.e., the Redemptions). In response to this decision, the BIC: (i) Explored bifurcating the mapping of these two Funds from the overall Fund transfer, (ii) Considered pushing back the overall effective date, and (iii) Reconsidered the merits of the entire mapping transaction. As a result of these efforts, the BIC determined that: (a) It was inconsistent with the BIC's investment philosophy to exempt these Funds from the mapping entirely; (b) Due to the administrative, recordkeeping, and communication effort involved in a transaction of this size, it was unreasonable to defer the mapping of two Funds to a later date; and (c) Since offering a streamlined menu of no-cost options was advantageous to Plan participants, it was in their interests to implement the change in its entirety, effective December 1, 2005.

To carry out the Redemptions with minimal disruption and expense, the BIC employed a ''transition management service'' affiliated with Mellon, whereby: (i) The securities received from the two Funds were placed in separate transition management accounts under the Plan; (ii) The transition account investment adviser directed the sale of securities so as to retain only those securities that would be accepted in kind by the applicable target Basic Fund; and (iii) The restructured portfolio of securities and cash were then transferred to the applicable target Basic Fund. The Redemption, restructuring, and transfer occurred overnight on November 30, 2005, without any ''blackout'' period on investment changes.

The Plan did not pay any fees or transaction costs to Mellon affiliates or any other party in connection with the transition. Mellon covered all transaction costs related to the transition, as well as any differences arising from sales of securities by the transition account or the acceptance of the securities by the Basic Funds at values different from the Funds' valuation of the securities. The intended result was that the dollar value of the amounts redeemed from the Funds was no less than the dollar value of the interests acquired in the target Basic Funds on December 1, 2005.

5. The applicant requests that the Department grant individual retroactive exemptive relief for the Redemptions of the Fund Shares. Investment option decisions for the Plan, which is sponsored by Mellon, are made by or under the authority of the BIC, the Plan's named fiduciary for investment purposes and whose members are Mellon corporate officers. Because subsidiaries of Mellon serve as the investment advisers and certain other service providers for the Dreyfus Funds, a transaction between the Plan and the Funds may be prohibited. The role of Mellon in deciding whether to redeem in kind the Plan's shares of the Stock Fund and Growth Fund, and under what conditions, raises the possibility of Mellon's acting in a transaction involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan or its participants and beneficiaries, as well as raising the possibility of self-dealing.

The applicant notes that PTE 77–3 provides exemptive relief for the sale of shares of a mutual fund by an employee benefit plan covering employees of the investment adviser for the mutual fund and its affiliates, subject to certain conditions. However, in three published exemptions, in which the Department has granted individual relief for the in-kind redemption of shares by plans of the investment advisers of mutual funds—see PTE 2003–01 (Northern Trust Company and Affiliates); PTE 2002–20 (Union Bank of California); PTE 2001–46 (Bank of America Corporation)—the exemption notices describe PTE 77–3 as being available for

a redemption of shares for cash, implying that PTE 77–3 would not be available for an in-kind redemption. See, e.g., PTE 2003–01, Proposed Exemption for Northern Trust Company and Affiliates, 67 FR 69561, 69563 (2002).

As the Plan did not have the option of redeeming its investment in the two Funds in cash, Mellon had discussions with the Department, through outside counsel, about obtaining individual relief for the contemplated in-kind Redemptions, modeled on the prior individual exemptions, above, as well as two authorizations granted under PTE 96–62—see Final Authorization Number (F.A.N.) 2003–16E (AmSouth Bancorporation) and F.A.N. 2005–01E (U.S. Trust Company of New York). As further evidence of good faith, Mellon also made efforts to submit an exemption application to the Department in advance of the Redemption date, once it was determined that in-kind Redemptions would be necessary, although it was not possible to obtain a final exemption prior to that date.

Mellon also requests prospective relief for future in-kind Redemptions involving the Funds, in the event that such opportunities should arise, to be carried out in accordance with the conditions of this exemption, if granted.

6. It is represented that Mellon structured the Redemptions based on prior relief granted by the Department for in-kind redemptions from affiliated mutual funds, as described above. The securities transferred in kind from the Funds were a pro rata portion of the Funds' holdings to the extent possible,[18] subject to adjustments for odd lots and securities that cannot be transferred, as determined in accordance with the Funds' valuation and in-kind redemption procedures that are designed to be objective and to comply with the requirements of the 1940 Act. Mellon hired and paid for an Independent Fiduciary to oversee and approve the Redemptions, as described further in item 7, below. Mellon also committed to making a make-whole payment to ensure that the value of the participants' accounts was not diminished by transaction costs or valuation differences as a result of the Redemptions.

Because the in-kind Redemptions from the two Funds involved ministerial transactions performed in accordance with pre-established objective procedures, in accordance with applicable regulatory requirements, including the 1940 Act and the rules and regulations thereunder, Mellon was unable to use its influence or control to cause the Plan to receive particular securities from the Funds.[19] To the extent possible, the Plan exchanged its Fund Shares for a proportionate share of the ''Transferable Securities''—securities for which market quotations are readily available and that are otherwise freely transferable[20]—held by each Fund portfolio. Securities that were not ''Transferable Securities'' (including certain contractual obligations and cash equivalents) were either to be liquidated or retained by the Fund, and the sale proceeds or equivalent value transferred in cash. The value of odd lot securities, fractional shares, and accruals on such securities also were transferred in cash, as appropriate. Therefore, the Redemptions were carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Plan.

The boards of the respective Funds have adopted procedures for the fulfillment of in-kind redemption requests in conformity with the no-action letter issued by the SEC staff to Signature Financial Group Inc.[21] The pricing methodology to be applied with respect to a redemption in kind under these procedures complies with Rule 2a–4 under the 1940 Act, the general rule that governs the valuation process for purposes of determining the current price of mutual fund shares. Pursuant to these procedures, for purposes of the in-kind Redemptions, the values of the securities is determined based on, as applicable, current market prices or quotations, as of close of business, other approved valuation methodologies, and any ''fair value'' determinations (as described further below) on the date of the redemption request (the ''Valuation Date''), in accordance with Rule 2a–4

[18] As further explained by the applicant, the reason for the ''to the extent possible'' language here and elsewhere in this paragraph is that it may not always be possible to divide a Fund's holdings of securities on a fully proportionate basis, due to the minimum increments in which the particular securities are traded. For example, the smallest unit of an equity security is typically a share. If the proportionate division of the portfolio would require dividing single shares into fractional shares, then the shares that would otherwise have to be divided would be sold and the cash proceeds divided instead. Even where the proportionate division could be done by dividing down to single shares, it may not be economical to do so because that would result in the creation of ''odd lots''—lots of less than 100 shares—which are more expensive to sell. In such instances, it may be to the advantage of both parties for the round lot of 100 shares to be sold rather than divided, and the parties can then divide the cash proceeds. Bonds are held in larger units, generally of a minimum of $1,000 principal value, so some of those, too, may require conversion to cash to achieve a proportionate distribution.

[19] According to the applicant, the Funds have adopted ''Procedures Relating to Redemptions-In-Kind By Affiliated Persons'' (''Procedures''). As the Plan is considered to be an ''affiliated person'' under the 1940 Act, the Redemptions were made in accordance with the Procedures. The Procedures include the requirement that ''[s]ecurities distributed in connection with any such redemption-in-kind shall represent the affiliated shareholder's pro rata portion of all assets held by the Fund immediately prior to the redemption, with any adjustments as may be necessary in connection with, for example, restricted securities, odd lots or fractional shares.'' The applicant acknowledges that securities held in each Fund may have different purchase dates and tax bases attached to them. In redeeming the Plan's shares of the Funds, each Fund distributed the Plan's pro rata portion of the Fund's assets, including a pro rata portion of each tax lot for each Fund portfolio security, held immediately prior to the Redemption, with any adjustments necessary with respect to odd lots and fractional shares. Among other requirements of the Procedures, the distributed securities were valued in the same manner as they were valued for purposes of computing the Fund's net asset value per share, and the Redemption was consistent with the Fund's redemption policies and undertakings (as set forth in each Fund's then current prospectus and statement of additional information). The Procedures are reflected in the terms and conditions of the requested exemption.

[20] According to the applicant, for purposes of the proposed exemption, the Funds treat as ''securities for which market quotations are readily available'' any securities for which market quotations are normally available, but for which market quotations may not be available on the day of the in-kind distributions, due to events outside the control of Mellon. For example, if the Taiwan stock market were to close because of a typhoon, no market quotations would be available on that day for securities traded on that market, even though those securities are publicly traded. As described further below, such securities would be ''fair valued'' based on the most recent available trading information and any information that would indicate a change in value since the most recent trades or quotations.

[21] In the no action letter to Signature Financial Group, Inc. (Dec. 28, 1999), the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the 1940 Act for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.'' As explained in footnote 3, above, the Dreyfus Funds have adopted Procedures in accordance with the Signature Financial Letter for use in affiliated transactions, and those Procedures must be followed for transactions with the Plan.

The Signature Financial letter does not address the marketability of the securities distributed in kind. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than the range of securities covered by SEC Rule 17a–7, 17 CFR 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily available.'' SEC Rule 17a–7(a). Under this exemption request, exemptive relief also would be limited to in-kind distribution of securities for which market quotations are readily available, as defined in footnote 4, above. The value of any other security was paid to the Plan in cash. In addition, consistent with the Signature Financial letter, the Procedures adopted by the Dreyfus Funds require pro rata distributions for any in-kind redemptions.

under the 1940 Act and the procedures, using sources independent of Mellon. In general, values are determined as of close of trading on the New York Stock Exchange on the particular day, using market prices such as the last sale price or the most recent bid and asked quotations. In the event that a Fund holds securities for which market quotations are not readily available or illiquid securities, the Fund would determine the fair value of the security in accordance with its ''fair value'' procedures that have been adopted by its board (including a majority of disinterested directors). The fair value procedures require the Fund board, its pricing committee or the Fund's valuation committee to determine an appropriate price or pricing methodology for the particular security, as appropriate, considering such factors as fundamental analytical data, the nature and duration of restrictions on disposition, an evaluation of relevant market forces, and public trading in similar securities. The minutes of any meetings of the pricing and valuation committees describing the action they have taken and information they considered are presented to the Fund board and included in the board minutes. The Fund is required to preserve all relevant records for no less than six years.

The Growth Fund includes a substantial percentage of non-U.S. securities. Under its valuation procedures, this fund values foreign equity securities under certain circumstances using ''fair value'' prices provided by an approved independent pricing service. The service uses a model to adjust the foreign closing price of a security to reflect the historical correlation of that security with subsequent movements in the U.S. market, market indices, and other appropriate market measures, and the fund uses the adjusted price when the change in the U.S. stock market on that day exceeds a pre-determined ''trigger point'' and the security meets a ''minimum confidence interval.'' (The ''confidence interval'' is the confidence level that the pricing service assigns to the fair value price it determines for a particular security based on its historical data on price movements in that security. Founders requires that the adjusted price meet a minimum confidence level to ensure reliability.) Although the Stock Fund invests principally in securities of U.S. issuers, it would use a similar pricing methodology in the event it holds foreign securities.

Each Fund's fair value procedures was provided to, reviewed, and approved by the Independent Fiduciary in advance of the Redemption. The respective Funds retained documentation, in the form of the fair value reports prepared in accordance with the fair value procedures, showing how the procedures were applied and followed for each security valued in this manner.

It was possible that the securities received by the transition accounts would be sold at prices different from the values used by the Funds in determining their distributions. Also, as the collective investment fund that is the target fund for the assets of the Growth Fund generally uses market value pricing for foreign securities, rather than the fair value procedure adopted by the Growth Fund, it was possible that the collective fund would assign a different value to the foreign securities it received than did the Growth Fund. As indicated above, Mellon made up any difference in value such that the dollar value of the interests received by the Plan from the collective funds was no less than the corresponding dollar value distributed by the two Funds.

Not later than 30 business days after completion of a Redemption, the Funds confirmed in writing:

(i) The number of Fund Shares held by the Plan immediately before the Redemption (and the related net asset value per Share and the aggregate dollar value of the Shares held);

(ii) the identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the board of the Funds (using sources independent of Mellon) for obtaining current prices from independent pricing services and market-makers;

(iii) the price of each such security for purposes of the Redemption; and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities.

7. U.S. Trust Company, N.A. (U.S. Trust), a national bank, was retained by the BIC as the ''Independent Fiduciary'' for purposes of this proposed exemption. U.S. Trust has confirmed its independence from Mellon and its eligibility to serve as Independent Fiduciary—that it is not controlled by, or under common control with, Mellon, does not control Mellon, and that no more than one percent of its gross income for federal income tax purposes will be paid by Mellon. U.S. Trust has acknowledged that it is a fiduciary to the Plan, as defined in section 3(21) of the Act, and has represented that it understands and accepts the duties, responsibilities, and liabilities in acting as a fiduciary under the Act for the Plan.

In its capacity as Independent Fiduciary to the Plan, U.S. Trust's responsibilities pursuant to the terms of an engagement letter, dated November 22, 2005, by and between Mellon and U.S. Trust, were to (i) make a determination as to whether the terms of the Redemptions were fair to the participants and beneficiaries of the Plan and are comparable to, and no less favorable than, terms that would be reached as a result of arms' length negotiations between unaffiliated parties, (ii) provide its opinion in a written report, dated November 29, 2005, (the Report) on behalf of the Plan as to the fairness and reasonableness of each Redemption, as compared to redemption of the Plan's shares for cash, which would involve the liquidation of Fund securities, the transfer of cash to the Plan, and the reinvestment of such cash by, or on behalf of the Plan, in a designated collective investment fund, and (iii) consider and conclude, on behalf of the Plan, whether to approve each Redemption.

In the Report, U.S. Trust has stated that, based upon its review of the methodology of the Redemptions from the Funds and the difference in the costs associated with an in-kind redemption versus a hypothetical cash redemption for the Plan's assets held by each of the Funds, it believes that the proposed Redemptions would be fair to the participants of the Plan and no less favorable than the terms that would be reached at arms' length between unaffiliated parties. Furthermore, U.S. Trust believes that the method to be used in conducting the Redemptions is comparable to, and no less favorable than, a similar in-kind redemption reached at arms' length between unaffiliated parties.

This was because, among other things, Mellon would be paying the transaction costs associated with the Redemptions and would make a cash payment to the Plan to eliminate any implementation shortfall, so that the Plan would be able to redeem its investment in the Funds without bearing the typical costs associated with a redemption, whether that redemption be in cash or in kind. Therefore, U.S. Trust approved the Redemptions from the Funds, provided that the Redemptions were conducted in accordance with the information provided to U.S. Trust by Mellon and the Funds.

8. U.S. Trust conducted a post-transfer review, summarized in a letter

dated January 23, 2006,[22] in which it confirmed that the transfer was carried out in accordance with the required criteria and procedures, by testing a sampling of certain material aspects of the redemption transactions.[23]

According to U.S. Trust, the Plan received (into two collective investment funds) its pro rata portion of each Transferable Security (rounded to the nearest round lot) held by the Funds and its pro rata portion of the cash that the Funds held based upon the ownership percentage that the Plan held in each Fund. The amount of cash transferred to the collective investment funds from each of the Funds was adjusted for the value of all the shares that did not transfer in kind due to rounding and was adjusted for the cash value of the Plan's pro rata share of the Funds' other balance sheet assets (receivables and prepaid expenses net of current liabilities). Neither of the Funds held non-transferable securities,[24] so there was no cash adjustment to reflect the value of any non-transferable securities. Finally, the assets transferred to the Plan were valued in accordance with the Funds' procedures and applicable law.

In the Pre-Trade analysis performed by Mellon Transition Management Services, the costs to sell securities distributed by the Stock Fund that would not be accepted in kind by the corresponding collective investment fund were estimated to be $4,286, combined for both commissions and spread. For the securities distributed by the Growth Fund, that would not be accepted in kind, the combined costs were estimated to be $12,724. The Plan was immediately reinvested after the Transfer; therefore potential opportunity costs associated with reinvestment risk was minimized. If the Plan had received cash instead of its pro rata portion of the assets of the Funds, it would have been forced to incur its pro rata portion of the sell side transactions costs, and it would have had to incur all of the buy side transactions costs when it reinvested the proceeds. Furthermore, there may have been a time lag from the date of the redemption request to the time the Plan had fully redeployed the proceeds. This time lag would have imposed an opportunity cost by not being invested in securities that would have had the potential to match the Plan's stated objective for this portion of the Plan's assets.

After the completion of the transitions from the Funds, a post-trade analysis was performed by Mellon Transition Management Services that listed the actual costs that were incurred. For the Stock Fund, 94% of the portfolio transferred in kind, leaving only 6% that was traded in the open market. The total cost of these trades was $3,163 compared to the pre-trade estimate of $4,286. For the Growth Fund, 42% of the portfolio transferred in kind, and 58% was traded on the open market. The total cost of these trades was $7,886 compared to the pre-trade estimate of $12,724.

Mellon represented that it would pay all of the expenses incurred, including the commissions and spread costs, to conduct the transfer. In addition, Mellon guaranteed that the Plan would not suffer an implementation shortfall if the portfolios of securities fell in value during the transfer. Mellon provided this protection with respect to an implementation shortfall while not seeking to require the Plan to give up its upside if the portfolios of securities increased in value during the transfer. Because the transaction was designed so that the Plan would receive no less than its entire investment in each of the Funds, while not sacrificing any potential upside during the transition period, the Plan held cash and securities equal to or greater in value at the market open on December 2, 2005 than it did at the market open on November 30, 2005.[25]

The applicant represents that, if there is an opportunity for additional Redemptions under this exemption, if granted, involving the Funds, such transactions will occur only if the Independent Fiduciary concludes that an in-kind transaction is in the best interests of the Plan, consistent with the above-described procedures.

9. In summary, the applicant represents that the Redemptions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) By accepting an in-kind redemption and using a transition management account strategy, the Plan lowered its transaction costs compared to the expenses that would have been incurred if it had withdrawn its investments in the two affected Funds in cash and then reinvested the cash because the Plan paid no brokerage commissions nor other fees, either directly or through its investment in either the transferring or receiving funds, in connection with the redeemed amounts (other than customary transfer charges paid to parties other than Mellon and its affiliates);

(b) The Plan received a pro rata portion of the securities of the two affected Funds in the Redemption equal in value to the Fund Shares redeemed, as determined in a single valuation (using sources independent of Mellon) performed at the close of business on the Redemption date, in accordance with Rule 2a–4 under the 1940 Act;

(c) The Redemption was overseen by U.S. Trust as Independent Fiduciary and was subject to prior written authorization by U.S. Trust based on U.S. Trust's determination, following full and detailed written disclosure of information regarding the Redemption, that the terms of the Redemption were fair and reasonable to the Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption was in the best interests of the Plan and its participants and beneficiaries; and

(d) Each of the Plan's dealings with the Funds, the investment advisers of those Funds, or any affiliated person thereof, would be on a basis no less favorable to the Plan than dealings between the Funds and other shareholders holding shares of the same class of the particular Fund.

Notice to Interested Persons: The applicant will provide notice of the proposed exemption, after publication in the **Federal Register**, to (i) active participants in the Plan, and (ii) retiree and terminated vested participants, alternate payees, and beneficiaries in pay status. Notice to active participants in (i) above will either be by an individual direct interoffice mailing, or electronically in accordance with the conditions of 29 CFR 2520.104b–1. Notice to participants and beneficiaries in (ii) above will be provided by first

[22] The applicant notes that the post-transaction review was completed within 60 days and represents that other post-transaction reviews in connection with future in-kind Redemptions, if any, would also be completed within that time frame.

[23] Condition (K) of the operative language refers to testing ''a sampling'' of material aspects of the Redemptions by the Independent Fiduciary. The applicant represents, however, that the Independent Fiduciary was provided with data as of the Redemption date that listed each security transferred or sold for both the Stock Fund and the Growth Fund. With all of the data available to it, the Independent Fiduciary chose to review all of the individual security transactions, not merely a sampling.

[24] The applicant further represents that no Rule 144A securities were involved in the Redemptions.

[25] According to U.S. Trust, it determined that the Plan held cash and securities at the market open on December 1, 2005 equal in value to the shares it had redeemed, with the share values determined as of the close of business on November 30, 2005. However, a small number of the securities received were sold by the Plan on December 1st because the Plan did not want to retain them as investments. Mellon reimbursed the Plan for the costs related to these sales. U.S. Trust represents that it then looked at the value of the Plan's holdings as of the market open on December 2nd, by which time the in-kind redemption, sales, and reimbursements had been completed, to ensure that the plan suffered no loss.

class mail, or electronically in accordance with the conditions of 29 CFR 2520.104b–1.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of August, 2006.

Ivan Strasfeldm,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department Of Labor.

[FR Doc. E6–13623 Filed 8–18–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2006–09; Exemption Application No. D–11033 et al.]

Grant of Individual Exemptions; The Southwest Gas Corporation (Southwest Gas)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Southwest Gas Corporation (Southwest Gas) Located in Las Vegas, Nevada

[Prohibited Transaction Exemption 2006–09; Exemption Application No. D–11033]

Exemption

Section I—Transactions & Conditions

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to the direct or indirect purchase, from Southwest Gas, of the common stock of Southwest Gas by an individual retirement account (IRA) that is (i) established for the benefit of a non-employee of Southwest Gas,[1] (ii) operated pursuant to the terms of the Southwest Gas Corporation Dividend Reinvestment and Stock Purchase Plan (the DRIP), and (iii) maintained in part through administrative services provided by Southwest Gas, a disqualified person with respect to the IRA, provided that the following conditions are satisfied:

(a) The IRA that is established by a DRIP participant pursuant to the terms of the DRIP (the DRIP IRA) is maintained for the exclusive benefit of the individual covered under the IRA (the IRA Owner), his or her spouse, or their beneficiaries;

(b) Southwest Gas complies with all applicable securities laws relating to the Southwest Gas DRIP;

(c) Administrative and recordkeeping services provided by Southwest Gas to the DRIP IRA are rendered pursuant to a written agreement between Southwest Gas and an independent trustee of the DRIP IRA (the IRA Trustee) in which Southwest Gas agrees to act as the IRA Trustee's agent for the provision of such services;

[1] Pursuant to 29 CFR 2510.3–2(d), the subject IRAs are not ''employee benefit plans'' covered by Title I of the Act. However, because the IRA is a ''plan'' for purposes of section 4975 of the Code, the Department has jurisdiction under Title II of the Act over this matter.

(d) Southwest Gas receives no compensation, fees, or commissions, directly or indirectly, for the provision of such administrative and recordkeeping services, including any portion of the fees that the IRA Trustee may be entitled to receive from the DRIP IRA;

(e) The combined total of all fees and other consideration received, direct or indirect, by any disqualified persons (other than Southwest Gas) for the provision of services to the DRIP IRA is not in excess of ''reasonable compensation'' within the meaning of section 4975(d)(2) of the Code;

(f) The DRIP IRA and/or IRA Owner does not pay a brokerage fee or commission in connection with the purchase of the common stock of Southwest Gas;

(g) Neither Southwest Gas, the IRA Trustee, nor any affiliate thereof has any discretionary authority or control regarding the determination to acquire, manage, or dispose of the DRIP IRA assets, or renders investment advice (within the meaning of 26 CFR 54.4975–9(c)) respecting those assets;

(h) Cash dividends paid on Southwest Gas common stock held in the DRIP IRA account that are used to purchase Original Issue Shares of Southwest Gas common stock are automatically reinvested in additional shares of Southwest Gas common stock on the earliest date that such dividends can reasonably be segregated;

(i) Cash dividends paid on Southwest Gas common stock held in a DRIP IRA account that will be used to purchase Open Market Shares of Southwest Gas common stock under the DRIP are temporarily invested by the IRA Trustee, on the earliest date that such cash dividends can reasonably be segregated, in a no-load money market mutual fund registered under the Investment Company Act of 1940, and earnings accrued thereon are allocated at the end of each quarter on a pro-rata basis among those IRA Owners who earned such dividends during that quarter and then applied immediately towards the purchase of additional shares of Southwest Gas common stock for the accounts of such IRA Owners;

(j) Pending the IRA Trustee's investment of the cash contributions of IRA Owners (including rollover contributions), such amounts are temporarily invested by the IRA Trustee, on the earliest date that the IRA Owners' contributions can reasonably be segregated, in a no-load money market mutual fund registered under the Investment Company Act of 1940, and earnings accrued thereon are allocated at the end of each quarter on a pro-rata basis among those IRA Owners who made a contribution during that quarter and then applied immediately towards the purchase of additional shares of Southwest Gas common stock for the accounts of such IRA Owners;

(k) The terms of both the money market mutual fund and of any purchase of Southwest Gas common stock pursuant to the terms of the DRIP (including the purchase price) are at least as favorable to the DRIP IRA as those obtainable in a comparable arm's length transaction with an unrelated party;

(l) Prior to participation in the DRIP IRA, each IRA Owner receives a written disclosure, drafted in a manner calculated to be understood by the average IRA Owner, which contains: (i) The general terms and conditions of the DRIP IRA; (ii) The identity of the no-load money market mutual fund; (iii) Any fees, commissions, or compensation paid to the IRA Trustee and/or its affiliates in connection with the DRIP IRA, including the investment advisory and other fees paid by the mutual fund to the IRA Trustee and/or its affiliates; (iv) A disclosure of the right of IRA Owners to receive written notice of any amendment to the terms of the DRIP or the DRIP IRA at least 30 days in advance of its effective date (and the right of such IRA Owners to refuse consent to any amendment); and (v) Information about this exemption from the prohibited transaction rules applicable to the DRIP IRA and the right of each IRA Owner to request a copy of both the April 28, 2006 notice of proposed exemption and a copy of this final exemption;

(m) An IRA Owner participating in the DRIP IRA is furnished periodically with a statement, at least quarterly, containing (i) the date, quantity, and price with respect to each purchase of common stock that occurred during the prior quarter and (ii) information concerning the quarterly, pro rata allocation of money market mutual fund earnings attributable to each IRA Owner's account during the period immediately preceding the investment of cash amounts in Southwest Gas stock;

(n) Southwest Gas retains, at least annually and at its own expense, an independent certified public accountant to perform an audit, in accordance with generally accepted auditing standards, of the DRIP IRAs, and provides the IRA Trustee with the current audit report prepared by such accountant, together with any written commentary from the accountant that accompanies the audit; and

(o) The IRA Owner is permitted to terminate his or her participation in the DRIP IRA at any time, without penalty, and transfer his or her IRA account balance to an IRA at another financial institution.

Section II—Definitions

(a) The term ''IRA'' means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term ''IRA'' shall not include an individual retirement account that is an employee benefit plan covered by Title I of the Act.

(b) The term ''DRIP'' (an acronym for Dividend Reinvestment Plan) refers to the ''Southwest Gas Corporation Dividend Reinvestment and Stock Purchase Plan'', which allows investors to purchase Southwest Gas common stock and to automatically reinvest cash dividends paid on such stock into additional shares of Southwest Gas stock.

(c) The term ''Original Issue Shares'' refers to authorized but unissued shares of Southwest Gas common stock purchased directly from Southwest Gas.

(d) The term ''Open Market Shares'' refers to outstanding shares of Southwest Gas common stock purchased on the open market or through negotiated transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 28, 2006 at 71 FR 25229.

For Further Information Contact: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number.)

Massachusetts Mutual Life Insurance Company Located in Springfield, Massachusetts

[Prohibited Transaction Exemption 2006–10; Exemption Application Number D–11228]

Exemption

Section I—Transactions

(a) If the conditions of Sections II, III and V are met, the restrictions of section 406(a)(1)(B) and (D) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to: (1) The extension of credit (''Market Rate Advance or Advances'') by Massachusetts Mutual Life Insurance Company (''MassMutual'') to a participant-directed individual account plan (''the Plan''); and (2) the Plan's repayment of a Market Rate Advance or Advances, plus accrued interest; and

(b) If the conditions of Sections II, IV and V are met, the restrictions of section 406(a)(1)(B) and (D) and 406(b)(2) of the

Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The interest-free extension of credit (''Interest-free Advance'') to a Plan by its respective sponsor (''the Plan Sponsor'') and (2) the repayment, by the Plan to the Plan Sponsor, of any Interest-free Advance.

Section II—General Conditions

(a) Each Market Rate Advance and each Interest-free Advance (collectively ''the Advance or Advances'') is made in connection with the administration of a portion of the Plan's assets by MassMutual as a unitized fund (''Unitized Fund'') in order to enable daily transactions, such as participant investment transfers, distributions or participant loans, and to facilitate redemptions from the Unitized Fund;

(b) Each Advance is unsecured, uncollateralized, and without recourse;

(c) No commitment fees or commissions are paid by the Plan with respect to the Advances;

(d) The aggregate amount advanced on any business day that an Advance is initiated does not, after the Advance is made, exceed 25% of the total market value of the Unitized Fund;

(e) Each Advance is made in accordance with the terms of a written agreement between MassMutual, the Plan, and, if Interest-free Advances by the Plan Sponsor are being offered, the Plan Sponsor (''the Agreement''). The Agreement describes the terms and procedures for the Advances, including instructions addressing the initiation, amount and repayment. With respect to Market Rate Advances, the Agreement sets forth the formula or method for determining the interest rate payable with respect to each Advance. The Agreement is approved in writing by a fiduciary of the Plan who is independent of, and not an affiliate of, MassMutual (''Independent Plan Fiduciary'');

(f) The Agreement may be terminated by the Independent Plan Fiduciary at any time, subject to the Plan's repayment of any outstanding Advances, with no penalty for such termination;

(g) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Agreement;

(h) Any employer security in a Unitized Fund is a ''publicly traded qualifying employer security'' as defined below;

(i) The Plan is required to repay each Advance and any accrued interest in accordance with the terms of the Agreement as soon as possible after the initiation of the advance;

(j) Within one business day after an Advance is initiated, MassMutual notifies the Independent Plan Fiduciary of the amount of the Advance and, if a Market Rate Advance, the actual interest rate to be applied;

(k) Within ten (10) days after a Market Rate Advance is fully repaid, MassMutual provides the Independent Plan Fiduciary with a confirmation statement including the date of repayment, the amount of the Advance, and if a Market Rate Advance, the actual interest rate applied, and the total amount of interest paid by the Plan;

(l) Each Advance is initiated, accounted for and administered by MassMutual, in accordance with the terms of the Agreement and the Act;

(m) Neither MassMutual nor any of its affiliates is: (1) A trustee of the Plan (other than a nondiscretionary trustee who does not render investment advice with respect to the assets of the Unitized Fund); (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and Code section 414(g)); (3) a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, any assets of the Unitized Fund; or (4) an employer any of whose employees are covered by the Plan;

(n) MassMutual maintains or causes to be maintained for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in the next paragraph to determine whether the conditions of this exemption have been met, except that:

(1) if the records necessary to enable the persons described in the next paragraph to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of MassMutual, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than MassMutual which is responsible for recordkeeping, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by the next paragraph;

(o)(1) Except as provided below in subparagraph (2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in the above paragraph are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the plan or any duly authorized employee or representative of such fiduciary;

(C) Any contributing employer and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the plan or the duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subparagraph (1)(B)–(D) above shall be authorized to examine trade secrets or commercial or financial information which is privileged or confidential.

Section III—Conditions Specific to Market Rate Advances

The relief provided under Section I (a) is available only if the following conditions are met:

(a) Market Rate Advances are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(b) Neither MassMutual nor its affiliate has or exercises any discretionary authority or control with respect to the initiation of a Market Rate Advance, the amount of a Market Rate Advance, the interest rate payable on a Market Rate Advance, or the repayment of the Market Rate Advance;

(c) Interest payable by the Plan on each Market Rate Advance is determined in accordance with an objective formula or method described in the Agreement.

Section IV—Conditions Specific to Interest-free Advances

The relief provided under Section I (b) is available only if the following conditions are met:

(a) No interest or other fee is charged to the Plan, and no discount for payment in cash is relinquished by the Plan, in connection with the Interest Free Advance;

(b) The Interest-free Advance is not a loan described in section 408(b)(3) of ERISA and the regulations promulgated there under (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated there under (26 CFR 54.4975–7(b));

(c) The Interest-free Advance is not made directly or indirectly by an employee benefit plan;

(d) Any Interest-free Advance that is entered into for a term of 60 days or

longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

Section V—Definitions

(a) The term ''affiliate'' means (i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''Plan Sponsor'' means the employer of the employees covered by the Plan.

(d) The term ''publicly traded qualifying employer security,'' for purposes of this exemption, means a security that meets the definition of ''stock'' pursuant to section 407(d)(5)(A) of the Act and the definition of ''NMS stock'' as defined in SEC Regulation NMS, 17 CFR 242.600(b)(47).

(e) The term ''unitized fund'' for purposes of the exemption means a fund that, to facilitate trading and/or accounting, has established ''units'' representing undivided interests in all of the assets of such fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on April 28, 2006 at 71 FR 25233.

For Further Information Contact: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan) Located in New York, New York

[Prohibited Transaction Exemption No. 2006–11; Application No. D–11355]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 17, 2006, to (1) the acquisition of certain stock rights (Stock Right(s)) by the Plan in connection with a Stock Rights offering by Revlon, Inc. (Revlon), a holding company that wholly owns Revlon Consumer Products Corporation (RCPC), a party in interest with respect to the Plan; (2) the holding of the Stock Rights by the Plan during the subscription period of the Stock Rights offering; and (3) the disposition or exercise of the Stock Rights by the Plan, provided that the following conditions were met:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms to all shareholders of common stock of Revlon;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The Plan received the same proportionate number of Stock Rights as other owners of Class A common stock.

Effective Date: This exemption will be effective as of February 17, 2006.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on June 2, 2006 at 71 FR 32132.

During a conversation with the Department, the applicant sought clarification with respect to a condition in the Notice, which is discussed below. On page 32132 of the Notice, condition (e) states the following:

(e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

Upon discussion with the applicant, the Department has determined that condition (e) should be revised to read as follows:

(e) The Plan received the same proportionate number of Stock Rights as other owners of Class A common stock;

The Department hereby modifies the exemption to incorporate such change.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Retail Clerks Welfare Trust Health and Welfare Plan (the Plan) Located in Seattle, Washington

[Prohibited Transaction Exemption 2006–12; Exemption Application No. L–11258]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply, effective July 1, 2005, to the purchase by Plan participants and beneficiaries of prescription drugs from pharmacies established and maintained by contributing employers to the Plan, or their affiliates (the Custom Network), which are parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The terms of each transaction are at least as favorable to the Plan as those the Plan could obtain in a similar arm's-length transaction with an unrelated third party;

(b) All determinations regarding which party in interest pharmacies, if any, may participate in the Custom Network, will be made by the Plan's independent fiduciary based on objective standards developed by the independent fiduciary in reliance on information provided by NMHCrx, the Plan's Pharmacy Benefits Manager, an entity which is independent of any contributing employer to the Plan, and the Plan's independent actuarial consultants;

(c) At least 50% of the providers participating in the Custom Network are pharmacies of contributing employers other than the employer of any individual Plan participant;

(d) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the Custom Network pharmacies will be at least one percentage point less than would be the costs through the use of NMHCrx's preferred provider network pharmacies (the PPN pharmacies);

(e) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the PPN pharmacies will be significantly less than costs for the retail purchase of prescription drugs from non-participating pharmacies;

(f) The Plan's independent fiduciary will monitor the subject transactions to ensure that all conditions of the exemption, including conditions (d) and (e) regarding pricing, continue to be satisfied during each plan year; and

(g) All future updated summary plan descriptions, furnished to participants, will state that the purchase price of a particular prescription drug at Custom

Network pharmacies may be less than the purchase price that is available either through the use of the PPN pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be: (i) Lower at Custom Network pharmacies than at the PPN pharmacies and (ii) Significantly lower at the Custom Network pharmacies than at non-participating retail pharmacies.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 2, 2006 at 71 FR 32129.

Effective Date: This exemption is effective July 1, 2005.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of August, 2006.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–13622 Filed 8–18–06; 8:45 am]

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Vol. 71, No. 161

Monday, August 21, 2006

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FEDERAL REGISTER PAGES AND DATE, AUGUST

43343–43640 1
43641–43954 2
43955–44180 3
44181–44550 4
44551–44882 7
44883–45360 8
45361–45734 9
45735–46072 10
46073–46382 11
46383–46846 14
46847–47072 15
47073–47438 16
47439–47696 17
47697–48446 18
48447–48792 21

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7747 (See Proclamation 8039) 43635
8038 43343
8039 43635
Executive Orders:
11651 (See Proclamation 8039) 43635
13222 (See Notice of August 3, 2006) 44551
Administrative Orders:
Notices:
Notice of August 3, 2006 44551
Presidential Determinations:
No. 2006-18 of August 2, 2006 45361

5 CFR

531 47692
550 47692
591 43897
630 47693
735 46073
1001 43345
2635 45735
3301 48447
Proposed Rules:
890 44592
1653 45437

7 CFR

28 47073
56 47564
235 46074
301 43345
762 43955
922 43641
1218 44553
1260 47074
Proposed Rules:
246 ..... 43371, 44784
250 43992
305 43385
319 43385
352 43385
981 47152
1421 45744
1483 43992
2902 ..... 47566, 47590

8 CFR

Proposed Rules:
212 46155
235 46155

9 CFR

327 43958
381 43958
Proposed Rules:
3 45438
93 45439
94 45439
95 ..... 44234, 45439
98 45444

10 CFR

451 46383
950 46306
1010 48447
Proposed Rules:
20 43996
30 43996
31 43996
32 43996
33 43996
35 43996
36 47751
50 ..... 43996, 44593
61 43996
62 43996
72 43996
110 43996
150 43996
170 43996
171 43996
431 44356
820 45996
835 45996

12 CFR

226 46388
268 44555
611 44410
Proposed Rules:
204 46411

14 CFR

13 47077
23 ..... 44181, 44182
25 ..... 48449, 48451, 48453, 48457
39 ..... 43352, 43961, 43962, 43964, 44185, 44883, 45363, 45364, 45367, 45368, 45370, 46389, 46390, 46393, 46395, 47697, 47702, 47706, 47707, 47711, 47714, 47717, 47725, 48461, 48463, 48466,
43 44187
71 ..... 43354, 43355, 43356, 43357, 44188, 44885, 46076, 46077, 47078, 47079, 47727
97 ..... 44560, 44562, 48470
413 46847
414 46847
Proposed Rules:
35 43674
39 ..... 43386, 43390, 43676, 43997, 44933, 44935, 44937, 45447, 45449, 45451, 45454,

45457, 45467, 45471, 45744, 46128, 46413, 47154, 47752, 47754, 48487, 48490, 48493
71 .....43678, 43679, 43680, 46130, 46131, 46132, 46133, 48495

15 CFR

764.....44189
Proposed Rules:
740.....44943
742.....44943
744.....44943
748.....44943
922.....46134

16 CFR

305.....45371
Proposed Rules:
437.....46878
Ch. II.....46415
1307.....45904
1410.....45904
1500.....45904
1515.....45904

17 CFR

210.....47056
228.....47056
229.....47056
240.....47056
249.....47056
Proposed Rules:
38.....43681
210.....47060
228.....47060
229.....47060
240.....47060
249.....47060

18 CFR

33.....45736
42.....43564, 46078
Proposed Rules:
35.....48496
410.....48497

19 CFR

10.....44564
163.....44564
178.....44564
Proposed Rules:
4.....43681
101.....47156
122.....43681

20 CFR

416.....45375
Proposed Rules:
404.....44432, 46983

21 CFR

101.....47439
172.....47729
341.....43358
510.....43967
520.....43967
529.....43967
558.....44886
Proposed Rules:
106.....43392
107.....43392
1310.....46144

22 CFR

51.....46396
Proposed Rules:
41.....46155
53.....46155

24 CFR

Proposed Rules:
15.....46986
91.....44860
570.....44860
3286.....47157

25 CFR

Proposed Rules:
15.....45174
18.....45174
150.....45174
152.....45174
179.....45174
224.....48626
502.....44239
546.....44239
547.....46336

26 CFR

1 .....43363, 43968, 44466, 44887, 45379, 47079, 47080, 47443, 48473, 48474
31.....44466
602.....47443
Proposed Rules:
1 .....43398, 43998, 44240, 44247, 44600, 45474, 46415, 46416, 47158, 47459, 47461, 48590
31.....44247, 47461
602.....45474

27 CFR

555.....46079
Proposed Rules:
555.....46174

28 CFR

32.....46028

29 CFR

100.....47732
1614.....43643
1956.....47081
2700.....44190
2704.....44190
2705.....44190
4022.....47090
4044.....47090
Proposed Rules:
1625.....46177

30 CFR

250.....46398
254.....46398
Proposed Rules:
202.....46879
206.....46879
210.....46879
217.....46879
218.....46879

31 CFR

208.....44584
315.....46856
341.....46856
346.....46856
351.....46856
352.....46856
353.....46856
359.....46856
360.....46856

32 CFR

199.....47091
362.....43652
505.....46052
Proposed Rules:
312.....44602
318.....44603
323.....46180
536.....46260
537.....45475

33 CFR

100 .....43366, 44210, 44213, 46858, 47092, 47094, 48475
117 .....43367, 43653, 44586, 44914, 45386, 45387, 47096, 47737, 48477
125.....44915
138.....47737
165 .....43655, 43973, 43975, 44215, 44217, 45387, 45389, 45391, 45393, 45736, 46101, 46858, 47098, 47452, 47454, 47456, 47738, 47740, 48477
Proposed Rules:
100.....43400, 47159
101.....48527
103.....48527
104.....48527
105.....48527
106.....48527
110.....45746, 46181
117.....48498
125.....48527
165.....43402, 44250

34 CFR

300.....46540
301.....46540
600.....45666
668.....45666
673.....45666
674.....45666
675.....45666
676.....45666
682.....45666
685.....45666
Proposed Rules:
Ch. VI.....47756

36 CFR

242.....43368, 46400
Proposed Rules:
242 .....46417, 46423, 46427

37 CFR

1.....44219
201.....45739, 46402
212.....46402
Proposed Rules:
201.....45749

38 CFR

3.....44915
59.....46103

40 CFR

9.....45720, 47330
52 .....43978, 43979, 44587, 46403, 46860, 47742, 47744
81.....44920, 46105
155.....45720
156.....47330
165.....47330
180 .....43658, 43660, 43664, 43906, 45395, 45400, 45403, 45408, 45411, 45415, 46106, 46110, 46117, 46123, 47101
300 .....43984, 47747, 48479
302.....47106
355.....47106
712.....47122
716.....47130
Proposed Rules:
49.....48694
51.....48694
52 .....45482, 45485, 46428, 46879, 47161
55.....47758
59.....44522
60.....45487
61.....45487
63.....45487, 47670
81.....44944, 45492
122.....44252
261.....48500
262.....48500
300.....46429
412.....44252

41 CFR

Proposed Rules:
61-300.....44945

42 CFR

409.....47870
410.....47870
411.....45140
412.....47870, 48354
413.....47870
414.....47870, 48354
424.....47870, 48354
485.....47870
489.....47870
505.....47870
1001.....45110
Proposed Rules:
414.....44082
484.....44082

43 CFR

Proposed Rules:
4.....45174
30.....45174
415.....47763
3200.....46879
3280.....46879

44 CFR

64.....45424, 47748
Proposed Rules:
67.....45497, 45498

45 CFR

Proposed Rules:
5b.....46432
1621.....48501

46 CFR

1.....48480
5.....48480
10.....48480
12.....48480
13.....48480
Proposed Rules:
10.....48527
12.....48527

15.....48527

47 CFR

1.....43842
54.....43667
64 .....43667, 47141, 47145
73 .....45425, 45426, 47150, 47151

Proposed Rules:

Ch. I.....45510
1.....43406, 48506
2 .....43406, 43682, 43687, 48506
4.....43406
6.....43406, 48506
7.....43406, 48506
9.....43406, 48506
11.....43406
13.....43406, 48506
15.....43406
17.....43406
18.....43406
20.....43406, 48506
22.....43406, 48506
24.....43406, 48506
25.....43406, 43687
27.....43406, 48506
52.....43406
53.....43406
54.....43406
63.....43406
64.....43406
68.....43406, 48506
73 .....43406, 43703, 45511, 48506
74.....43406, 48506
76.....43406
78.....43406, 48506
79.....43406
80.....48506
87.....48506
90.....43406, 48506
95 .....43406, 43682, 48506
97.....43406, 48506
101.....43406, 48506

48 CFR

Ch. 1.....44546, 44549
6.....44546
12.....44546
26.....44546
52.....44546
204.....44926
212.....46409
219.....44926
225.....46409
242.....44928
252.....46409
253.....44926

Proposed Rules:

204.....46434
235.....46434
252.....46434
1804.....43408
1852.....43408

49 CFR

171.....44929
222.....47614
229.....47614
369.....45740
572.....45427
594.....43985
1420.....45740
1507.....44223
1572.....44874

Proposed Rules:

107.....46884
110.....44955
178.....44955
389.....46887
601.....44957
1111.....43703
1114.....43703
1115.....43703
1244.....43703
1515.....48527
1570.....48527
1572.....48527

50 CFR

17.....46864
18.....43926
20.....45964
21.....45964
100.....43368, 46400
622.....45428, 48483
635.....45428, 48483
648.....44229, 46871
660.....44590
679 .....43990, 44229, 44230, 44231, 44591, 44931, 46126, 46409, 48483, 48485
680.....44231

Proposed Rules:

17 .....43410, 44960, 44966, 44976, 44980, 44988, 46994, 47765
20.....47461
32.....46258
100 .....46416, 46423, 46427
216.....44001
224.....46440
300.....45752
600.....46364
622.....43706
648.....43707
665.....46441

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 21, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in California; published 7-21-06

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Weatherization Assistance Program for low-income persons; renewable energy technologies and systems; published 6-22-06

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alabama; published 6-22-06

New York; published 7-20-06

Hazardous waste:

Project XL Program; site-specific projects—

New England University Laboratories XL Project, MA and VT; expiration date extended; published 6-21-06

Superfund program:

National oil and hazardous substances contingency plan priorities list; published 6-22-06

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Kansas; published 7-19-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:

Ragin' on the River; published 8-4-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 7-17-06

Boeing; published 7-17-06

Mitsubishi; published 7-17-06

Twin Commander Aircraft Corp.; published 7-17-06

Standard instrument approach procedures; published 8-21-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tomatoes grown in Florida; comments due by 8-28-06; published 6-29-06 [FR 06-05833]

Vegetables; import regulations:

Fresh tomatoes; minimum grade requirements; partial exemption; comments due by 8-28-06; published 6-29-06 [FR 06-05832]

AGRICULTURE DEPARTMENT

Energy Policy and New Uses Office, Agriculture Department

Biobased products; designation guidance for Federal procurement; comments due by 8-28-06; published 7-27-06 [FR E6-12018]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Antiboycott penalty guidelines; comments due by 8-29-06; published 6-30-06 [FR 06-05917]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic hagfish; comments due by 8-28-06; published 7-28-06 [FR E6-12128]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; emergency exemptions, etc.:

Myclobutanil; comments due by 8-28-06; published 6-28-06 [FR E6-10093]

Solid wastes:

Hazardous waste; identification and listing—

Exclusions; comments due by 8-30-06; published 7-31-06 [FR 06-06587]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 8-28-06; published 7-27-06 [FR E6-11809]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations; permitting requirements and effluent limitations guidelines; court order response; comments due by 8-29-06; published 6-30-06 [FR 06-05773]

Concentrated animal feeding operations; permitting requirements and effluent limitations guidelines; court order response; comments due by 8-29-06; published 8-4-06 [FR E6-12626]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Temporary Assistance for Needy Families Program:

Reauthorization; statutory changes; implementation; comments due by 8-28-06; published 6-29-06 [FR 06-05743]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Trade Act (2002); implementation:

Express consignment carrier facilities; customs processing fees; comments due by 8-28-06; published 7-28-06 [FR E6-12067]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Great Lakes; Coast Guard water training areas; comments due by 8-31-06; published 8-1-06 [FR E6-12332]

Regattas and marine parades:

Poquoson Seafood Festival Workboat Races; comments due by 8-31-06; published 8-1-06 [FR 06-06618]

HOMELAND SECURITY DEPARTMENT

Immigration:

United States Visitor and Immigrant Status Technology Program (US-VISIT)—

Enrollment of additional aliens; US-VISIT requirements extended; comments due by 8-28-06; published 7-27-06 [FR E6-11993]

Privacy Act; implementation; comments due by 8-28-06; published 7-27-06 [FR E6-11996]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-28-06; published 8-17-06 [FR 06-07026]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf ; oil, gas and sulphur operations:

Platforms and structures; pipelines and pipeline rights-of-way; comments due by 9-1-06; published 7-3-06 [FR E6-10401]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

North Dakota; comments due by 8-30-06; published 7-31-06 [FR E6-12203]

Pennsylvania; comments due by 8-30-06; published 7-31-06 [FR E6-12186]

LABOR DEPARTMENT

Employment and Training Administration

Adjustment assistance; applications, determinations, etc.:

Sun Chemical, Inc., et al.; comments due by 8-28-

06; published 8-16-06 [FR E6-13513]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Bank Secrecy Act compliance; reporting and filing a Suspicious Activity Report (SAR) guidance; comments due by 8-28-06; published 6-28-06 [FR E6-10136]

Conversion of insured credit unions to mutual savings banks; disclosures, voting procedures, etc.; revisions; comments due by 8-28-06; published 6-28-06 [FR 06-05728]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Stein, William III, M.D.; comments due by 8-28-06; published 6-14-06 [FR E6-09246]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act; implementation; comments due by 8-28-06; published 7-28-06 [FR E6-12124]

PERSONNEL MANAGEMENT OFFICE

Allowances and differentials:

Uniform allowance rate increase; comments due by 8-29-06; published 6-30-06 [FR 06-05890]

SUSQUEHANNA RIVER BASIN COMMISSION

Project review and approval, special regulations and standards, and hearings and enforcement actions; comments due by 9-1-06; published 7-7-06 [FR 06-05632]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 8-31-06; published 8-1-06 [FR E6-12301]

Boeing; comments due by 8-28-06; published 6-28-06 [FR 06-05702]

EADS SOCATA; comments due by 9-1-06; published 8-2-06 [FR E6-12419]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 8-28-06; published 7-28-06 [FR E6-12106]

Eurocopter France; comments due by 8-29-06; published 6-30-06 [FR 06-05880]

Rolls-Royce Deutschland Ltd & Co.; comments due by 8-28-06; published 6-27-06 [FR E6-10087]

Airworthiness standards:

Special conditions—

Dassault Aviation Model Falcon 7X airplane; comments due by 8-28-06; published 7-12-06 [FR E6-10894]

Dassault Aviation Model Falcon 900EX and Falcon 2000EX airplanes; comments due by 9-1-06; published 7-18-06 [FR E6-11367]

Gulfstream Aerospace Corp. Model G-1159 Gulfstream II airplanes; comments due by 8-30-06; published 7-31-06 [FR E6-12139]

McCauley Propeller Systems Model 3D15C1401/C80MWX-X propeller; comments due by 9-1-06; published 8-2-06 [FR 06-06633]

Class D airspace; comments due by 9-1-06; published 8-2-06 [FR 06-06636]

Class E airspace; comments due by 8-28-06; published 7-12-06 [FR 06-06143]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Business electronic filing and burden reduction; comments due by 8-28-06; published 5-30-06 [FR 06-04872]

Computer software;cross-reference; public hearing; comments due by 8-30-06; published 6-1-06 [FR 06-04827]

Section 1248 attribution principles; comments due by 8-31-06; published 6-2-06 [FR E6-08551]

TREASURY DEPARTMENT

Thrift Supervision Office

Savings associations:

Subordinated debt securities and mandatorily redeemable preferred stock; inclusion as supplementary capital; comments due by 9-1-06; published 7-3-06 [FR E6-10341]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Outer Coastal Plain, NJ; comments due by 9-1-06; published 7-3-06 [FR E6-10384]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Accrued benefits; statutory changes and clarification; comments due by 8-28-06; published 6-29-06 [FR E6-10228]

Compensation, pension, burial, and related benefits:

Filipino veterans and survivors; comments due by 8-29-06; published 6-30-06 [FR 06-05923]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the ''Coach John Wooden Post Office Building''. (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the ''John Paul Hammerschmidt Post Office Building''. (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the ''Captain George A. Wood Post Office Building''. (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the ''Morris W. Milton Post Office''. (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the ''Earl D. Hutto Post Office Building''. (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the ''Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office''. (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the ''Sergeant Jacob Dan Dones Post Office''. (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280

Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

Last List August 17, 2006

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Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4]Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
4	(869–060–00004–6)	10.00	Jan. 1, 2006
5 Parts:			
1–699	(869–060–00005–4)	60.00	Jan. 1, 2006
700–1199	(869–060–00006–2)	50.00	Jan. 1, 2006
1200–End	(869–060–00007–1)	61.00	Jan. 1, 2006
6	(869–060–00008–9)	10.50	Jan. 1, 2006
7 Parts:			
1–26	(869–060–00009–7)	44.00	Jan. 1, 2006
27–52	(869–060–00010–1)	49.00	Jan. 1, 2006
53–209	(869–060–00011–9)	37.00	Jan. 1, 2006
210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
300–399	(869–060–00013–5)	46.00	Jan. 1, 2006
400–699	(869–060–00014–3)	42.00	Jan. 1, 2006
700–899	(869–060–00015–1)	43.00	Jan. 1, 2006
900–999	(869–060–00016–0)	60.00	Jan. 1, 2006
1000–1199	(869–060–00017–8)	22.00	Jan. 1, 2006
1200–1599	(869–060–00018–6)	61.00	Jan. 1, 2006
1600–1899	(869–060–00019–4)	64.00	Jan. 1, 2006
1900–1939	(869–060–00020–8)	31.00	Jan. 1, 2006
1940–1949	(869–060–00021–6)	50.00	Jan. 1, 2006
1950–1999	(869–060–00022–4)	46.00	Jan. 1, 2006
2000–End	(869–060–00023–2)	50.00	Jan. 1, 2006
8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
1–199	(869–060–00025–9)	61.00	Jan. 1, 2006
200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
10 Parts:			
1–50	(869–060–00027–5)	61.00	Jan. 1, 2006
51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
11	(869–060–00031–3)	41.00	Jan. 1, 2006
12 Parts:			
1–199	(869–060–00032–1)	34.00	Jan. 1, 2006
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–060–00034–8)	61.00	Jan. 1, 2006
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
500–599	(869–060–00036–4)	39.00	Jan. 1, 2006
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
14 Parts:			
1–59	(869–060–00040–2)	63.00	Jan. 1, 2006
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–060–00046–1)	60.00	Jan. 1, 2006
800–End	(869–060–00047–0)	42.00	Jan. 1, 2006
16 Parts:			
0–999	(869–060–00048–8)	50.00	Jan. 1, 2006
1000–End	(869–060–00049–6)	60.00	Jan. 1, 2006
17 Parts:			
1–199	(869–060–00051–8)	50.00	Apr. 1, 2006
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[6]Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[10]Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[5]Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
*1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–060–00130–1)	61.00	July 1, 2006
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
*101	(869–060–00170–1)	21.00	[11] July 1, 2006
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

[10] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.